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# BANKING LAW AND PRACTICE IN INDIA

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**EX-CHIEF JUSTICE OF THE HIGH COURT OF BOMBAY.**

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TO  
THE LATE SIR DAVID MASSON,  
K. C. I. E.

Founder of the Punjab Banking Co., Ltd.

&

Pioneer of Joint-Stock Banking in the Punjab

This Book  
respectfully dedicated by the author as a token of  
his affection, respect and gratitude.



## PREFACE TO THE FIRST EDITION.

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Various books on Banking Law and Practice, some written by eminent authorities like Dr. H. L. Hart, and Sir John Lubbock, have already been published, and therefore it appears unnecessary to explain the justification for another book on what should appear to be the same theme.

In the first place it may be stated that such books as exist at present deal with the Banking Law and Practice in England and not with Indian Banking Law and Practice. While it is true that in the matter of both Banking Law as well as Practice, particularly the latter, as joint-stock banks in this country have been and are even at present almost entirely under the control and guidance of the British bankers, India has followed in the footsteps of England; but it can by no means be said that the laws and practice of banking in this country are absolutely similar to those of England. No doubt a good many of the Bank managers in this country continued to be under this misconception until as late as 1919, when in *Masabhai v. Virchand* the question arose whether or not by striking off the word 'bearer' on a cheque without adding the word 'order' the right of its payee to negotiate it was restricted, in spite of the fact that evidence was given that bankers in Bombay like their *confreres* in England treated such cheques as negotiable. The Bombay High Court held, that according to Indian Law its payee could not negotiate it. This ruling was reversed by the passing of the Negotiable Instruments (Amendment) Act of 1919, which harmonised the law and the practice on the point. Similarly as late as 1922, the distinction given to the bankers in India differed from that extended to bankers in England, as till 1928 corresponding to the Bills of Exchange

**Amendment (Crossed Cheques) Act 1906** was passed in this country. Another important point on which the Indian Banking Law differs from the English Banking Law even to-day is that as according to the definition of a bill of exchange given in Section 3 of the Bills of Exchange Act 1882, a bill of exchange must be drawn by one person upon another, and therefore a draft drawn by a branch of a bank on its head office or another branch of the same bank cannot be legally treated as a cheque in England but as the Indian law does not lay down that the drawer and the drawee of a bill of exchange must be two different parties, such drafts can be treated as Cheques and therefore the protection given to bankers in case of cheques under Sections 85, 128 and 131 of the Negotiable Instruments Act 1881 extends to such drafts. Similarly, there are differences in the practice of banking in England and in this country.

Secondly, the study of Banking Law and Practice has been neglected by bank employees in this country to such an extent that even to-day there are some bank officials with thirty to forty years' experience who do not know the significance of a crossing with the words "not negotiable". About a year ago a cheque crossed with the words "not negotiable" sent for collection through a well-known bank was returned unpaid with a slip initialled by a fairly responsible officer with the remark "Cheque not negotiable" and even the collecting banker did not care to point out the glaring mistake on the part of the paying bank. If banking is to be developed on proper lines in this country it is essential that bankers as well as their customers should know their duties and rights.

Thirdly, the co-operative credit movement in this country has gained a fairly firm footing, and consequently the co-operative banks at least in some parts of the country have begun to extend their activities by opening current accounts and although properly trained staff for such banks is

**Foreword by Sir Norman C. Macleod, Kt., B.A.  
(Oxon.) Bar-at-law, Ex-Chief Justice,  
High Court, Bombay.**

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Amongst the books in my father's library were two heavy volumes entitled "The Theory and Practice of Banking" by my uncle Henry Denning Macleod. In those days the subject of Banking did not appeal to me as sufficiently interesting to induce me to investigate the contents of those volumes, and it was not until a much later date that I came to regret that I had not included as within the scope of my legal training the study of Banking, when as Official Assignee, Official Liquidator, and finally as a Judge I began to discover that it could be most fascinating as well as interesting. *Prof. Tannan's work on Banking Law and Practice in India of which I have had the privilege of reading the opening chapters should prove to be of the greatest value to the student who desires to qualify himself for a commercial or legal career.*

It is difficult to define concisely what is included within the term "Banking". As the author points out the functions of a Bank are so numerous that there is a tendency for Banks to specialise in one or more of them. But the foundation of all Banking is Credit and the Credit of a Bank depends upon the reputation of its proprietors or managers for integrity and for the observance of sound business principles just as much as on its resources. In the history of Banking the public have received many a rude shock owing to the absence of one or both of these qualifications in the proprietors of Banks, especially of private Banks which did not publish their balance sheets. But even the publication of a balance sheet duly audited affords very little protection to the customers of a Bank if the management



is unsound. Auditors can see whether the books are kept according to the correct principles of accounting, but for the value to be attached to the figures in the accounts they can only depend upon the information given to them by the proprietors or managers. The principal item on the asset side is usually 'Book Debts considered good' and no auditor is expected to guarantee the accuracy of that item. In the case of the Specie Bank Ltd. it was found to be an easy matter to deceive the auditors by opening fictitious accounts, so that the deficiency which actually existed was concealed by the amounts apparently due on these accounts being included amongst the good assets. The liquid resources of the Bank were also made to appear to be greater than they were by fictitious entries being posted on the last day of the half year, which were written back the next day. It is axiomatic that a Bank must depend for its success on its capacity for attracting deposits and the smaller private Banks were thus often tempted to offer a higher rate of interest than the market rate which proved fatal to many of them, the depositors failing to realise that if a Bank paid a higher rate it would have to invest its money again at a higher rate than was consistent with safety in order to make its profit. There was the further temptation for the proprietors of private Banks to use their customers' money for the purpose of speculation, and this proved to be the undoing of the once well known firm of Watson & Co. The value therefore of a balance sheet must depend on an honest valuation of assets, and how long the proprietors of a business concern should wait before writing down doubtful assets in the hope of a turn for the better, is a question which admits of much discussion. If this case be done out of profit it is wise to do it at once. But if this is not possible then in some cases the premature writing down might bring about a crisis, which would have been averted if there had been more faith in what the future might bring forth, while on the other hand there is the risk of incurring the charge of carrying on business when the position had become untenable, as even of issuing

a false balance sheet. Credit then is the beginning and the end of all Banking. Credit is a delicate thing, a whisper in the bazar and the doors of a Bank may be thronged with customers anxious to withdraw their accounts. No Bank can by itself stand a prolonged run on its resources but in these days when banking is mostly in the hands of joint-stock banks the failure of one must necessarily prove dangerous to the others. Support will generally be forthcoming to any well managed Bank until public confidence has been restored.

In India the difficulties in the introduction of ample banking facilities into the country districts are very great. Any available capital which there may be will be resting in small quantities in many hands, and can only be attracted by the establishment of numerous branches by the parent Banks in the big cities. But such branches must be adequately staffed. If the staff are not adequately paid disaster may follow, if they are, the expenses may be greater than the profits accruing. The failure of many indigenous Banks in 1913 showed the danger of attempting the extension of Banking to the country districts without taking the precaution to provide that the business was conducted on sound principles by persons of proved integrity. Lately, the establishment of numerous Co-operative Societies all over this Presidency has enabled many a small investor to earn a reasonable rate of interest on his capital without any appreciable risk while the introduction of the Postal Savings Certificates has opened a still wider field to the capitalists of limited means. It is interesting to remember that 150 years ago one pound bank-notes were current in Scotland which could be exchanged for 21 shillings after a year from the date of issue, but the history of the Bank-note would require a separate volume and I must conclude by wishing Prof. Tannan every success in his enterprise.



it is hoped that books such as the one which is now being placed before the public will be of some help to them in the conduct of their business.

Another important factor which has weighed a great deal with the author in bringing out this book is the ridiculous position in which young men working in banks in India are placed at present. With a view to qualify themselves for higher appointments they are expected to pass the examinations of the Institute of Bankers, London, for which they have to study among other subjects the English Banking Law and Practice, whereas for the conduct of their actual business they are required to know the Indian Law and Practice of banking. In this book not only the principles of Indian Banking Law and Practice have been stated, but also the important points on which the banking law and practice in India differ from those of England, have been fully explained.

Moreover, thanks to the keen interest taken by the Honourable Sir Basil Blackett, K. C. B., the Finance Member of the Government of India, in the training of Indians in banking, the scheme of starting an Indian Institute of Bankers is more or less an accomplished fact, and therefore the need for a book of this type has become quite patent.

It is hoped that this book will prove helpful not only to the students of Indian banking law and practice, bankers and lawyers ; but will also be found very useful by merchants and others who have dealings with banks.

In the preparation of this book the author has consulted among others the following standard books to the authors of which he is much indebted :—

1. Hart's law of Banking.
2. Law of Banking by Sir John Paget.
3. The Practice and Law of Banking by H. P. Sheldon.
4. Banking and Negotiable Instruments by F. Tillyard.

The author is also grateful to Mr. E. Sykes, Secretary of the Institute of Bankers, London, Mr. S. N. Pochkhana-walla and Mr. N. L. Puri of the Central Bank of India, Ltd. for going through certain parts of the manuscript and making some useful suggestions. Thanks are also due to Mr. J.C. Bahl, B.A., B. COM. and Mr. F.N. Bunshah, B.A., LL. B., who have been helpful to the author in the correction of the proofs.

The author will be glad to receive criticisms and suggestions.

THE SYDENHAM COLLEGE OF  
COMMERCE AND ECONOMICS,  
BOMBAY,  
*31st October 1926.*

M. L. TANNAN.

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## CORRIGENDA.

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- Page 5, Line 18, Omit , after 40.
- „ 6, Line 13, Read *Public* for *public*.
- „ 7, Foot-note, Read *Raghuniath* for *Rangnath*.
- „ 9, Line 10, Read *People's* for *Peoples*.
- „ 25, Line 27, Read *Act* for *act*.
- „ 27, Line 4, Insert *even* between *applicable* and *though*.
- „ 29, Line 4th from the bottom, Omit, after *satisfactory*.
- „ 32, Line 29, Read *he is* for *they are*.
- „ 38, Line 7, Read " after *account*.
- „ 44, Line 4, Read *Underwood* for *Underword*.  
Omit asterisk and the relative foot-note.
- „ „ Line 31, read *Rolin* for *Robin*.
- „ 52, Second marginal note, Read *and* for *an*.
- „ 53, Ll. 21-22, The bracket closes after *state* and not after *e.g.*
- „ 55, last line, Read *than* for *han*.
- „ 61, After line 15, Insert Heading '*General Tendency towards amalgamation*.'
- „ 71, Line 10, Insert " after *admit*.
- „ 88, Line 8, Read *hundred* for *hundered*.
- „ 89, Line 10, Read *mortgagees* for *mortgages*.
- „ 94, Line 28, Read *preferably* for *preferrably*.
- „ 96, Line 6, Read *age-long* for *long age*.
- „ 97, Line 31, Insert *a* between *doubt* and *proportion*.
- „ 98, Line 18, Read *His* for *their*.
- „ 103, Line 20, Omit , after *As*.
- „ 121, Line 9th from bottom, Read *Savings* for *Saving*.
- „ 130, Line 2, omit *French* before *married*.
- „ 143, Line 12, Read *of* for *or*.
- „ 144, Line 4, Read *be* for *the* before *borne*.
- „ „ , Line 17 from bottom Read *for* for *or*.
- „ 152, Line 9, Omit *of a bank*.
- „ 169, Line 18, Read *allonge* for *allondge*.
- „ 173, 3rd line from bottom Insert *for loss* after *damages*.
- „ 180, Line 7, Read *the latter must suffer* after *banker*.

Page 181, Line 14, Read ~~state~~ for *stale*.

- „ 186, 3rd line from bottom, Read *Benegal* for *Bengal*.
- „ 193, 3rd line from bottom, in 3rd Column, Read ~~accoutor~~ for *accoutfor*.
- „ 198, Line 4, Read *or* for *and not*.
- „ 204, 10th line from bottom, Read *possibility of* for *possible*.
- „ 205, Line 12, Insert . instead of , after cheque and Read *Not* for *not* before only.
- „ 211, Line 6, Read *comma* instead of *full stop* after *forged*.  
and *the* for *The*.
- „ „ , Line 7, Read *and* for *he*.
- „ 224, Last line, Insert *comma* after *maker*.
- „ „ , Line 13 from bottom, Read *preceded* for *proceeded*.
- „ 235, Line 18, Read *hand over* for *handover*.
- „ 236, Line 2, Read *set off* for *setoff*.
- „ 244, Line 2, Insert *full stop* after *India*.
- „ 245, Line 12, Read *gauged* for *guaged*.
- „ 247, Line 6, Insert *and* after *banks*.
- „ 255, Line 7, Read *geographical* for *geographial*.
- „ 256, Foot-note, Read *Jardon* for *Jordan*.
- „ 354, Line 1, delete *comma* after *are*.
- „ 374, 3rd Marginal Note, Read *Legal Mortgage* for *Land Mortgage*.
- „ 397, Line 6, Read *or* for *of*.
- „ 407, Line 3 from bottom, read *Shares* for *Shars*.
- „ 448, Line 15, *Omit* ( (the Borrowers (s) ).
- „ 495, Lines 15-25 to be taken as foot-note on Sec. 84 (3).

# BANKING LAW AND PRACTICE IN INDIA.

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## CHAPTER I.

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### INTRODUCTORY.

“ Oh, East is East, and West is West, and  
never the twain shall meet,  
Till earth and sky stand presently at God's  
great judgment seat.”

The truth of these well known lines of Mr. Kipling's is being falsified. The material West is fast converting the spiritual East, the twain have met and India, like other countries of the East, is having her due share in the changing destiny. The old placid, dreamy contentment of philosophers is being steadily replaced by the stir and bustle characteristic of the new Dawn. Quite a mushroom growth of commercial concerns and industrial organizations is visible in every nook and corner.

“ Times change, and we with time.” The old order has changed yielding place to new, and we must have new needs with the new hour. To keep pace with the countries born and bred in the lap of materialism the backward country must be equipped with all the facilities enjoyed by its rivals or perish in the struggle for existence. Keen competition, carried to its bitterest extremes is the dominant note of materialism. He who runs may find the principle of Survival of the Fittest illustrated right and left. A single weak link and off goes the chain !

Railways, Steamships, Posts, Telegraphs, and other innovations of the Modern Era are playing their due part in this

struggle in India. One of the important quarters into which the rays of the new light have only very recently penetrated, is the sphere of Banking.

### History of Banking in India.

From times immemorial, the banker has been an indispensable pillar of Indian Society. He may have been missing, for aught we know, in the good old days when self-sufficiency was the law of the land. The introduction of the division of labour however, brought in its wake the use of money without which there was a peculiar complexity and trouble in the matter of exchanges. Money economy, in its turn, could not do without the institution of banking for any considerable time.

There is plenty of evidence to show that even prior to the advent of occidental ideas, India was not a stranger to the conception of banking. "*Rna* \* (debt) is mentioned from Rig Veda onwards, having apparently been a normal condition among the Vedic Indians. Reference is often made to debts, contracted at dicing. To pay off a debt was called *Rnam Sam-ni*. Allusion is made to debts contracted without intention of payment." This shows that the giving and taking of credit in one form or other must have existed as early as the Vedic period. However, the transition from money-lending to Banking must have occurred before Manu† could have devoted a special section to the subject of "Deposits & Pledges," where he says, "A sensible man should deposit his money with a person of (good) family, of good conduct, well-acquainted with the law, veracious, having many relatives, wealthy and honourable (Arya)." He further gives us

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\* Vedic index of Names and Subjects by A. A. Macdonnell and A. B. Keith, 1912, Vol. 1, p. 109.

† The Laws of Manu, Buhler, The Sacred Books of the East, Vol. XXV, p. 286, 1866.

## INTRODUCTORY.

rules which governed the policy of loans and rates of interest. Sir Richard Temple\* testifies to the fact that banking business was carried on in ancient India. Dr. Pramath Nath Bannerjee, in his book, "Public Administration in Ancient India" quotes from Gautama, Brihaspati and Budhayana verses regarding the regulation of the rates of interest. Reference is also made to the same in Kautilya's Arthashastra.

Although in recent years the history of banking in India has begun to receive attention, the subject still offers a wide scope for research work; but it is not necessary for our purposes to give any detailed description of the banking system which served this country before the advent of the British rule. However, banking in those days meant largely money-lending though certain other functions of modern banks were not unknown to the bankers of those days.

Bankers in India have always been regarded as very important members of the community in Government as well as in social circles. The Banker's Status. Land revenue was generally realised in kind, while the services were almost invariably paid in cash. The banker's assistance was more or less indispensable in this connection. Even in other financial matters of state he was frequently consulted. In the unsettled days of civil wars, when insecurity was generally at a high level the banker was almost the only shelter in money matters. He was the only reliable agency for the deposit of jewellery, cash and hoardings in other forms as was the case with the goldsmiths in England in the 17th century. State officials had no reputation in this respect. But the Indian Banker, however, was regarded as a worthy specimen of commercial morality. The time-honoured adage: "No salvation except through

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\* Sir Richard Temple's lectures: Journal of the Institute of Bankers, Vol. 2 (1881).



the preceptor ; no credit except through the money-lender " is significant in this respect.

The public confidence enjoyed by the Indian banker can well be realized from the fact that his hundi (inland bills of exchange) date as far back as the days of Mahabhart. A legend of the times of Lord Krishna has it that Narsinha Mehta of Junagarh drew a hundi on Seth Samalshah of Dwaraka. According to another tradition Vastupal Tejpal drew a hundi of ten crores on the Nagar Seth (city banker) of Ahmedabad, and the temples of Dilwara were built with the money.\*

The word hundi is said to be derived from the Sanskrit root "hund" meaning, to collect. Its derivation expresses the purpose for which originally such instruments were used. Even in modern times bills of exchange are generally used for the collection of debts. For instance, when a merchant in Bombay sells goods to a merchant at Delhi, the former draws a bill of exchange on the latter so as to collect the price of those goods. Similarly, when a merchant in Calcutta desires to collect a debt due from a merchant in Madras the former may draw a hundi for the amount upon the latter.

Although perhaps perfect strangers to the use of paper money, the Hindus, as we have seen, had been accustomed to the use of hundis from very remote times. Among them the banking business was confined to the issue and discount of bills of exchange, money lending and money changing. Very often banking business was carried on along with dealings in grains, cloth, etc., etc., or, with agency business. The importance of the part played by the banker in the commercial markets as well as in agricultural circles cannot be denied. The hundi system was the backbone of all commercial transactions. The transfer of funds from

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\* Indian Indigenous Banking, by Dr. L. C. Jain, p. 71.

one place to another at a fair distance took place with the help of the hundis. The agriculturist, as even now to some extent he does, had to depend on the banker for financial assistance.

Bankers lent money against personal as well as other securities, such as, ornaments, goods and immovable property. For every day loans, the banker's knowledge of individuals and their circumstances, on account of the narrow circle in which these transactions had to be carried out, rendered him more useful than even the modern public banks, which are practically impersonal in their character and have to go through many formal steps thereby sometimes annihilating their utility at the critical moment. The personal relations between the banker and his customers were of a cordial nature.

Usury or high rate of interest was widely prevalent in India. In Bengal, money was frequently lent to the farmers at 40, and sometimes even at 60%, and the standing crop was mortgaged for payment of the loan. Most writers attribute usury to the state of insecurity in India and the risk involved on account of the specially low status of the debtors. No doubt, these factors played a great part, but they were not invariably the only causes. The force of custom and limited communication barred the free play of economic forces of supply and demand. The adjustment of scales in such a state of society cannot be so quick as with modern facilities.

"Banking is my brains and other people's money." This most apt definition of banking given by the Bombay Provincial Banking Enquiry Committee is not applicable to money lending, which hardly constituted "Banking" as it is understood in the modern monetary world. The early Indian banker had comparatively little of deposit or discount business or dealings in other people's money which is the unfailing characteristic

of modern "banking." He may be called a moneylender rather than a banker.

The times have changed and Indian Banking of the "good old days" has undergone many alterations on account of the different forms and functions and the extreme complexity of modern business. All the same, the "old system" still retains its importance, though not to the same degree. The payment of taxes in cash, the security of the present government and the establishment of public joint stock banks have taken away a good deal of business from the hands of the Indian money-lender, still it cannot be denied that he occupies a very important place in the credit organization of the country.

#### **The Rise of public Banks in India.**

For the beginning of the occidental banking in India we must go back to the Calcutta Agency Houses, the trading firms which undertook banking operations for the benefit of their constituents. Prominent among these were Messrs. Alexander & Co., and Fergusson & Co. Both combined banking with other kinds of business and both were the predecessors of the early joint stock banks in India. The Bank of Hindostan, a mere appendage to the former was the earliest bank under European direction in India.

That banking is incompatible with any other kind of business, was well illustrated by the commercial disaster of 1829—32. Banking needs to be run with great caution while adventure is the essence of other kinds of business, e.g., commerce. Reckless speculation and a policy of placing profits before safety were responsible for the failure of the agency houses, which also involved the collapse of their banking departments. Having successfully withstood three severe runs on it, the abovementioned Bank of Hindostan could not survive the failure of its parent firm in 1832. Even in the case of the Sholapur Bank Ltd., which went into liquidation in 1918, the failure was attributed to this fatal

combination. Besides the usual banking business the company had the power to do business of "Merchants or capitalists either as principal or agents." \* His Lordship the Chief Justice of Bombay, passed very strong strictures and suggested that legal prohibition of combining banking business with other commercial concerns could have made what happened there more difficult, if not impossible.

The Indian Government did not awaken to the great need of a bank in India till 1809, the year when the Bank of Bengal obtained its Charter. One-fifth of its capital was contributed by the Government who shared in the privilege of voting and direction. The Charter limited the Bank's rate of interest to a maximum of 12%. The power of note issue, however, was not given to the Bank till 1823. In 1839 the Bank was given the power to open branches and to deal in inland exchange. The two other Presidency Banks, viz., the Bank of Bombay and the Bank of Madras were established in 1840 and 1843 respectively. The former had a share capital of Rs. 52,25,000 and the latter Rs. 30 lakhs, Government subscribing Rs. 3 lakhs in each case. As the notes issued by the Presidency Banks did not become popular they were replaced by Government paper money in 1862. These banks carried on their business in their respective territories till their amalgamation into the Imperial Bank of India on the 27th January, 1921.

The year 1860 marks a new era in the history of Public Banks in India, because it was in this year that the principle of limited liability was first applied to the joint stock banks. So far little or no banking legislation existed in India. Many banks had sprung up like mushrooms and died, mostly due to

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\* *Gosund v. Rangnath*, 32 Bom. L.R. 232.

speculation, mismanagement, and fraud on the part of those responsible for their floating, organization and management.

It was rather unfortunate for India that the speculative crisis of 1862—1865 should have come soon after the introduction of this important banking legislation. India's cotton exports increased by leaps and bounds, because as a result of the outbreak of the civil war in the United States of America, the supply of American cotton to Lancashire being cut off, the English cotton importers had to look to India as their main source of supply. This brought immense wealth in precious metals to India which led among other speculative enterprises to the flotation of banks, soon to be overtaken by disasters. Among several others the Bank of Bombay originally established in 1840 went into liquidation in 1868 and was restarted the same year with the same name. The failure of almost all these mushroom growths prejudiced the Indian, who is by nature a conservative, against banks carried on occidental lines. Between 1865 and 1870 only one bank, the Allahabad Bank Ltd., was established.

But that was not all. The fall in the gold price of silver almost synchronized with the disaster without allowing any time for the Indian indigenous banker to recover from the panic. India being then on the silver standard, every fall in the value of silver lowered the gold value of the rupee and added to the burden of the Indian Government, who had to find more rupees to meet the Home Charges in London. Again, every alteration in the Rupee-sterling rate of exchange also increased the element of uncertainty in the foreign trade of India and affected her industries.

Normality was not restored till after 1893 when the Indian mints were closed to the free coinage of silver. The slow growth of Joint Stock Banking till that year may partially be attributed to the currency troubles of India. Even after that year, although several commissions were appointed

to solve the currency problems of India, no attempt appears to have been made to secure a sound and stable banking system for the country. The Central Banking Enquiry Committee was appointed in 1929 and most of its important recommendations are yet under consideration.

Thanks to the Swadeshi movement which prompted the Indians to start many new institutions, the number of Joint Stock Banks increased remarkably in the boom of 1906—13. The Peoples Bank of India Limited, The Bank of India Ltd., The Central Bank of India Limited and The Bank of Baroda Limited were started during this period. The boom continued till it was overtaken by the crash of 1913—17, the most severe crisis that the Indian Joint Stock Banks have so far experienced.

In spite of the fact that it received no encouragement in its infancy from the Government and the severe crisis it had to face, the Indian Joint Stock Bank has come to stay. With the growth of commerce private banking is gradually disappearing. Gigantic enterprises in the fields of industries and commerce quite naturally stimulate public confidence, and this, together with the publicity which they are required to give to their accounts, goes a long way towards safeguarding the interests of their depositors. No individual whims, except in rare cases, can alter the direction in which the money of the depositors has to be invested. Generally there is a competent body of directors whose activities are invariably open to criticism at any stage. Elimination of the old factors of custom and expanded spheres of activity have naturally put a stop to the usurious rates of internal exchange, which on account of the increasing use of currency notes and the establishment of branch banks are fast disappearing. Public banks have also been responsible for lowering the rates of interest by attracting deposits and encouraging the use of cheque currency. They have equally facilitated the making of payments.

It is to be regretted that in spite of their utility and service to the public these banks received practically no help from the Government on account of its *laissez faire* policy in banking. banking and commercial matters. Even the severe banking crisis just before the Great War, which was responsible for failure of no less than 54 banks between November 1913 and December 1914, and 154 banks which had to close their doors between 1915 and 1927, the latter year accounting for sixteen does not seem to have affected the policy of the Government. A large number of these failures can be attributed to mismanagement and frauds and it is therefore necessary that the repetition of these failures should as far as possible be prevented by means of banking legislation. It can place a check on the dishonesty of directors and managers, and make embezzlement difficult if not impossible.

Elaborate banking legislation, according to some, may do more harm than good and retard the progress of joint stock banking in India. At the same time there is no denying the fact that the present Indian Companies Act is unsatisfactory particularly in regard to banking. Of the two ways in which the present regulations can be amplified, *vis.*, (1) by the promulgation of a special Bank Act comprising the necessary provisions governing all banking institutions, and (2) by the amendment and amplifications of the Indian Companies Act so as to provide for the additional matters which require to be dealt with by legislation, the Indian Central Banking Enquiry Committee have decided in favour of the former as it will be more convenient to the public as well as to the banks. Besides this the Government should also do something to popularise banking, to cultivate the banking habit and promote thrift among the people. If the 'let alone' policy is regarded as the most suitable one in England there is no reason that the same may be regarded as fitting to India.

also, especially when it is realized that joint stock banking in England is a century old whereas in India it is still in its infancy. The policy may be England's meat, but certain it is that it is a deadly poison for India with its undeveloped banking.

At present the banks in India are governed by the Indian Companies Act, 1913, some sections of which require certain conditions to be fulfilled by the banks concerning registration and maintenance of registers of shareholders, the keeping and audit of accounts, the preparation of balance sheets and statements of affairs in prescribed forms. But there is no specific provision for the proper organization, efficient management and reasonable supervision of the business of banks. Nor are they protected against the false misrepresentation of their affairs by interested critics. The Imperial Bank of India is governed by a special Act which imposes certain restrictions on the activities of the bank having regard to the fact that it is entrusted with the Government funds. Again as the Exchange Banks are not required to be registered in this country they are not subject to the provisions of the Indian Companies Act.

Most of the leading Indian Joint Stock Banks are at present under the management of non-Indians. The mere introduction of the occidental system of banking is not enough. The chief aim of a sound and well developed banking organization is to help in the development of the commercial and industrial possibilities of the country. This service, it will be readily admitted, can best be rendered if the management has a predominant element of the sons of the soil who are generally in a better position to know the needs of the country than others. Absence of Indians well trained in banking has been decidedly one of the main factors responsible for the slow development of branch banking in India, because banks could not

The present laws  
for banks in India.

Banks and their  
staff.



open branches even in comparatively large cities owing to their inability to bear the cost of a highly paid superior staff which had to be recruited from abroad. The growth of branch banking has also been retarded on account of the fact that the European managers of branches being ignorant of the common language used in business at certain places in India as well as of the social customs of her people could not come into the requisite close contact with them. If the branches of banks in comparatively small centres are placed under competent Indians it will encourage people to do business with joint stock banks and thus increase their business while their expenses will be kept at a low level. Up till recently the plea put forth for the recruitment of foreign staff was the lack of trained Indians. But with the advent of time commercial education in India has been advancing rapidly even to the point of producing a state of unemployment among those who have received such education ; hence there appears to be no reason why the recruitment of foreign staff should be continued except for such appointments as require persons having a very long experience and exceptional abilities. It must, however, be admitted that the absence of educated Indians on the staff of banks is also due to the fact that until recently the chief aim of an educated Indian has been either government service or professions such as law and medicine. It is, however, gratifying to note that staff officers of the Imperial Bank of India are now to an increasing extent being promoted from the Assistants trained in the Bank under the Probationers' Scheme.

As a result of the fact that our banks have largely been manned by European staff there has been a certain amount of variance between the law and practice of banking. The British bank staff having studied the British banking law have generally taken for granted that the same law was applicable in this country. The anomaly was brought home to them by a ruling of the Bombay High Court, where the

Practice and Law  
at variance.

point involved was whether striking off the word 'bearer' from a cheque, without adding the word 'order' amounted to a restriction on the rights of the payee to negotiate it. Although evidence was given to prove that the bankers in Bombay, as in England, treated such cheques as order cheques, the learned judge held that the law of this country as it stood then did not allow it and therefore such cheques were not negotiable. Thanks to the efforts of Mr. V. J. Patel, the Negotiable Instruments Amendment Act, 1919, removed this incongruity between banking law and practice in India.

Similarly although in England the protection given to the collecting banker was extended to crossed cheques credited though not collected as back as 1906 by the passing of the Bills of Exchange (Crossed Cheques) Act, it was neither asked for nor given to bankers in this country until the matter was brought to the notice of the Government of India by the present writer and the law was accordingly amended.

### **Evolution of Banking in the West.**

According to some authorities, the word 'bank' itself is derived from the words 'banco,' 'bancus,' or 'banque,' a bench. The early bankers, the Jews in Lombardy, transacted their business at benches in the market place. When a banker failed, his "banco" was broken up by the people, whence the word 'bankrupt.' This etymology is ridiculed by Macleod on the ground that "The Italian money changers as such were never called Banchieri in the Middle Ages." There are others who are of opinion that the word 'bank' is originally derived from the German word, 'banck' meaning a joint stock fund, which was Italianized into 'banco' when the Germans were masters of a great part of Italy. But "whatever be the origin of the word 'bank'" as Professor Ramchandra Rao says,\* "it would trace the history of banking in Europe from the Middle Ages."

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\* Present-day Banking in India, 1st edition, p. 88.

As early as 2,000 B. C., the Babylonians had developed a system of banks. There is evidence to show that the temples of Babylon were used as banks, and great temples as those of Ephesus and of Delphi were the most powerful of the Greek banking institutions. But the spread of irreligion soon destroyed the public sense of security in depositing money and valuables in temples and the priests were no longer acting as financial agents. The Romans did not organise State Banks as the Greeks, but their minute regulations as to the conduct of private banking were calculated to create the utmost confidence in it. With the end of the civilization of antiquity, the administrative decentralization and weakening of the Government authority with its inevitable counterpart of commercial insecurity banking degenerated for a period of some centuries into a system of financial makeshifts. But that was not the only cause. Old prejudices die hard and Aristotle's dictum that interest taking is unnatural and consequently immoral was adhered to fanatically, as even now among the religious books of the Mohammadans it is deprecated. The followers of Aristotle's dictum quite forgot that the ancient world, the Hebrews included, who although they had no system of banks that would be considered adequate from the modern point of view, had maintained money-lenders and made no sin of interest but of usury. However, upon the revival of civilization, growing necessity forced the issue in the middle of the 12th century and banks were established at Venice and Geneva, but in fact they did not become banks as we understand them till long after. But the origin of modern banking may be traced to the money dealers in Florence, who received money on deposit and were lenders of money in the 14th century, and the names of the Bardi, Acciajuoli, Peruzzi, Pitti and Medici soon became famous throughout Europe as bankers. At one time Florence is said to have had 80 bankers, but not any public bank.

In England we find that during the reign of Edward III money changing—an important function of Royal Exchanger. bankers of those days—was taken up by a Royal Exchanger for the benefit of the Crown. He exchanged the various foreign coins tendered to him by travellers and merchants entering the kingdom, into British money, and on the other hand supplied persons going out of the country, with the foreign money they required.

It is probably true to say that the ground was prepared for modern banking in England by the influx of gold from America in the Elizabethan Age and the simultaneous birth of foreign trade. Land ceased to be the only form of wealth, and the country gentleman and town merchant began to hold part of their 'capital' in cash. Impetus was given to public banking by the seizure by Charles I in 1640 of £130,000 in bullion deposited by the city merchants at the Tower. Their cashiers were then entrusted with large sums by the merchants but the trustees misappropriated their masters' money for their own benefit. Finding that their employees had not treated them better than their king they decided to keep their cash with the goldsmiths. Considerations such as these brought into prominence the need of keeping money in a safe place and thus there gradually grew up amongst merchants and traders a custom to deposit the spare cash with the goldsmiths, as they had the necessary accommodation for the safe storage of precious metals and in any event, for their own business, they had to employ watchmen. Against his deposits the depositor would receive a note, which originally was nothing more than a receipt and entitled the depositor to withdraw his cash on presentation. Two developments quickly followed, which were the foundation of 'issue' and 'deposit' banking respectively. The first was that these notes became payable to bearer, and so were transformed from a receipt to a bank note. They were payable

on demand and enjoyed a considerable circulation. Secondly, the goldsmiths gradually discovered that large sums of money were left in their keeping for long periods, and following the example of Dutch bankers, they thought it safe and profitable to lend out a part of the customers' money, provided such loans were repaid within the fixed time. Realizing the business profitable, and in order to attract larger amounts, they began to offer interest on money deposited with them, instead of charging a fee for their services in guarding their clients' gold. This marks an important step in the development of banking in that country. Business grew to such an extent that it soon became clear that a goldsmith could always spare a certain proportion of his cash for loans, regardless of the date at which his notes fell due. It equally became safe for him to make his notes payable at any time, for so long as his credit remained good, he could calculate on the law of averages the exact amount of gold he needed to meet the daily claims of his noteholders and depositors.

It was in 1672 that English banking received a rude shock. Charles II borrowed heavily from the goldsmiths and promptly repudiated his debts. This caused a general suspension of payment. Confidence, however, was restored in spite of the above shock and a general belief that the goldsmiths were guilty of imprudence and exorbitant practices; and it was soon after this date that the goldsmiths found that they could receive money on what is now termed 'current account,' *i.e.*, money withdrawable without notice.

The Bank of England was started in 1694 largely as the result of the financial difficulties of William III, who was carrying on war with France. The public distrust of goldsmiths was also responsible for the same. One Mr. Patterson suggested a way out of the difficulties by offering to raise £ 1,200,000 and to lend the same to the Government if certain

concessions, particularly the right to issue notes, were given to the proposed institution. The Government agreed to the terms offered by Mr. Patterson and an Act called the "Tonnage Act" was passed. The main provisions of the Act were as follows:—

- (1) It authorised the raising of £ 1,200,000 by subscription, the subscribers forming a corporation to be called "The Governor and Company of the Bank of England."
- (2) No person could subscribe more than £ 10,000 before the first of July following, and even after that date no one could subscribe more than £ 20,000.
- (3) "The Corporation was to lend the whole of its capital to the Government and in turn it was to be paid interest at the rate of 8%, and £ 4,000 for expenses of management."
- (4) "The Corporation was to have the privileges of a bank for twelve years, then the Government reserved the right of annulling the Charter after giving one year's notice to the company."
- (5) "The company were forbidden to trade in any merchandise whatever, but they were allowed to deal in bills of exchange, gold or silver bullion, and to sell any wares or merchandise upon which they had advanced money. . . ."

It was a formidable competitor to the comparatively small private banking firms which had grown up from the London goldsmiths and to the country firms, such as the Smiths of Nottingham.

The year 1708 witnessed the passing of an important Act, which prohibited any other bank with more than six partners issuing promissory notes, *i.e.*, bank notes. The most important clause of this banking legislation was as follows:—"That

during the continuance of the said Corporation of the Governor and the Company of the Bank of England, it shall not be lawful for any body, politic or corporate, whatsoever erected, or to be erected (other than the said Governor and Company of the Bank of England), or for other persons whatsoever united or to be united, in covenants or partnerships, *exceeding the number of six* persons, in that part of Great Britain called England, to borrow, owe or take up any sum or sums of money on their bills or notes payable on demand, or at less time than six months from the borrowing thereof."

This Act, as is evident, gave a monopoly of note issue to the Bank of England so far as *joint stock banks* were concerned, but left private banks having not more than six partners free to issue notes. In London the notes of the private banks did not circulate to any extent but as the Bank of England did not have any branch outside, its notes were not popular out of London. Private banks in the provincial cities began to play an important part after the middle of the eighteenth century and their number continued to grow up till it reached over 300 about the end of the century.

The crisis of 1825 marked a turning point and tolled the death knell of the small country bank and of the note as the foundation of the banking system. Legislation quickly followed. It was realized that joint stock banks with the right of note issue should be started outside London and therefore in 1826 an Act was passed which allowed banks consisting of more than six partners to issue notes provided they had no office within a radius of 65 miles from London. This led to the starting of the joint stock banks in the country as even at that time the monopoly of note issue given to the Bank of England by the Act of 1708 was interpreted to mean monopoly of joint-stock banking, probably because in those days the note issue was considered to be the most important as

Restriction of the  
monopoly.

well as the most paying function of banks. However, this wrong impression was removed by a gentleman named Mr. Joplin who, after studying carefully the provisions of the various Charters of the Bank of England, came to the conclusion that no such monopoly was given. This point was cleared in the Bank Charter Act of 1833 in which a clause was inserted authorising the establishment of joint-stock banks in London provided they did not issue notes payable to bearer on demand.

There was no limit then to the issue of notes, which private bankers, and after 1826, the country  
**The Peel's Act.** joint-stock banks were allowed to issue, and this resulted in numerous banking crises and bank failures. In 1844, another important stage was reached in the development of English banking, when by the Peel's Act of that year the right to issue notes in England was restricted to the banks then issuing notes in that country. Thus were laid the foundations of the monopoly of bank-note issue to the Bank of England.

After the passing of the Act of 1844, new banks with  
**Growth of Deposit Banking and Cheque Currency.** the right to issue notes could not be started and those allowed to issue notes could not increase their circulation. Thus greater attention towards deposit banking and cheque currency began to be paid. It was soon realised that cheque currency was almost as profitable as the issue of bank notes and thus, gradually these activities began to grow more and more important and many new banks were started for this business during the second half of the last century. After 1890 the movement in favour of bank amalgamation and absorption made its appearance and we find that the number of joint-stock banks in England and Wales has been reduced from 104 in 1890 to 16 in 1930 although during the same period the number of banking offices has gone up from 2,203 to 10,082.



### **Services of Banks.**

From what has been said about the evolution of banking, it must be clear to the reader that the taking care of other people's money and lending a part of it were the chief banking functions of the goldsmiths. Gradually these functions were extended and others were added. Some people believe that the dependance of commerce upon banking has become so great that, in their opinion, the cessation, even for a day or two, of the banker's activities would completely paralyse the economic life of a nation.

Bankers have nowadays to deal with an extraordinary number of matters. They serve as custodians of stocks and shares and other valuables. Imports into and exports out of a country are financed by the banks and documents relating to the goods so imported and exported at one time or another pass through the hands of bankers. Thus, they have to deal not only with Bills of Exchange, but with Bills of Lading, Railway Receipts, Warehouse Warrants, Marine Insurance policies and various other documents. As bankers, they advance money on securities, they issue letters of credit or travellers' cheques to customers wishing to travel abroad, as also to effect the purchases and shipment of goods. They enter into contracts of guarantee or suretyship and they undertake the administration of estates and thus assume the position of trustees; they assist industrial undertakings and occasionally finance the purchase of real property. They even sometimes obtain passports for their customers and deal with their incoming letters. On behalf of their customers they carry on correspondence with the income-tax authorities, make periodical payments such as rent, subscriptions etc. on instructions from their customers, act as executors of their customers' wills: in short, they do all they can to assist their customers. The more highly developed a country is, the more is the instrumentality of the banker utilised to carry through commercial transactions.

From its original narrow scope and modest purpose banking has developed to such an extent that it can truly be said that in countries such as England and the United States of America there is hardly one business deal in which the assistance of a bank in one form or another is not sought.

### **The Business of different types of banks.**

English banks as a rule are engaged in such business as the handling of current and deposit accounts, financing trade and industry by discounting bills, opening of credits, and in many similar ways; whilst, on the other hand, there has been a tendency, specially on the part of certain continental banks, to specialise in one or more of these activities. Thus, there are the Savings Banks, the scope of which is very much limited. In agricultural countries there are invariably Land Mortgage Banks which mainly engage in giving long term credit required for financing the purchase of real property as well as improvements of land. In certain industrial countries banks in addition to their ordinary banking business specialise in the financing of certain industries by means of buying and marketing their shares and debentures and helping them in other ways.

This development of banking business is by no means countenanced or encouraged by the more conservative school as represented by the English Joint Stock Banks, and business of that description is left to institutions specializing in it. At the same time such business can properly be described as banking business although it does not come under the category of commercial banking. Technically speaking, issuing houses which take up and guide the destinies of Government, Corporations and industrial capital flotations, are classed under the generic term of bankers. The same may be said of the discounting houses or bill brokers, though to a visitor to any one of the great discounting houses of the city of London there would appear to be a considerable difference between the

*common conception of banking houses and the visible activities and operations of discounting establishments.*

### **The Functions of Commercial Banks.**

A bank is usually thought of as a reliable agency with which money is deposited. The idea is wanting in precision. Banks do receive valuables for safe custody and undertake to return them, but that is only a subsidiary function. Usually, it is jewellery, deeds, securities and similar articles which are given as safe custody deposits. But the services rendered by a bank either as depository or as trustee are by no means of a very great importance. In very general terms, however, the functions of a commercial bank can be classified under the following main heads :—

#### **1. Receiving of money on deposit :—**

This is perhaps the most important function of almost all modern banks as it is largely by deposits that a bank prepares the basis for several other activities. The money power of a bank, by which it helps largely the business community depends largely upon the amounts it can borrow by way of deposits which may be in the form of fixed, savings bank, or current deposits. All these go towards the increase of its resources. The money received on fixed deposits can be used without any risk of withdrawal and in the case of savings bank deposits a bank can use a very large part of them as generally the demands of customers having such deposits are comparatively small on account of restrictions placed as to the amount to be withdrawn or the number of withdrawals to be made within a week. By the opening of current accounts, a bank not only obtains funds but provides its clients with deposit currency which is not only more convenient but also more economical than other forms of currency. By taking money on deposit the bank provides safe-keeping for people's money. But the money is not set apart in a strong room, it is replaced by a debt due from a banker and thus it provides a

temporary investment for money, paying interest so long as the money is retained and paying the principal on its being claimed in accordance with the contract.

## II. Issuing of notes :—

This function which was once considered to be the most paying part of a banker's business is in modern times performed generally by the central banking institutions in most of the leading countries of the world. Its importance to banks in general has dwindled in some of the leading countries in which the cheque currency has replaced bank notes to a large extent. For instance in England and in the United States of America the part which is played by bank notes is becoming more and more insignificant although they are still very popular in certain European countries such as France and Germany where serious efforts are being made to popularize the use of cheques as a means of payment.

## III. Lending of Money :—

This function is not only very important but also is the most important source of profit to most of the banks. When a bank agrees to discount a bill or gives funds in exchange for a promissory note the transaction is known either as a discount or a loan. In either case the bank agrees to place funds at the disposal of the borrower in exchange for a promise of payment at a future date. Thus, it enables those who find their own capital insufficient for carrying on business on a large scale, to do so with the help of the funds borrowed from a bank and thus use their capital more profitably than they could otherwise have done. Thus, a bank is able to help not only merchants but others also who, in turn, may use funds not only to their advantage but also to the advantage of the interests of the country.

## IV. Transferring money from place to place :—

Modern banks are, generally, in a position to remit money from one place or country to another by means

of drafts drawn upon their branches or agents. They can also by purchasing Bills of Exchange enable merchants and others to receive money from their debtors in other cities or countries. These facilities have helped a great deal not only the internal trade of different countries, but also the international commerce. It must be evident that the great strides which have been made by trade and commerce which, in turn, have been to a large extent responsible for the industrial development of different parts of the world would have been an impossibility but for the facilities in exchange provided by banks.

In addition to the main functions given above modern banks receive deposits for safe custody, buy and sell securities on behalf of their clients, issue Letters of Credit and Circular Notes and administer trusts.

### **The Meaning of Banking Law.**

There is no separate code of Law which applies to the banking business as distinguished from other kinds of business. A banker is subject to the same general principles of Law as apply to persons engaged in other fields of business. The law of contract applies to all contracts whether or not a banker is a party to them. Similarly, the law of torts and other branches of civil as well as criminal law make no distinction between persons who are bankers and those who are not. However, certain branches of law, such as the law relating to the Negotiable Instruments, are of greater interest to bankers than other persons, as such instruments play a far more important part in the banking business than they do in other kinds of business. There are only a few sections of the Negotiable Instruments Act, 1881, as well as the Indian Companies Act, 1913, which distinguish between bankers and non-bankers. The only important piece of legislation which is meant for bankers alone in this country is the Bankers' Books Evidence Act, 1891, under which a banker is allowed to produce in

courts certified copies of accounts or entries in his books, whereas, others are required to produce their account books. This exceptional or preferential treatment to the banker is given on the ground that it is impossible for a banker to carry on his business if his account books are required to be produced in courts of Law. Thus, it will be clear that the term 'banking law' means such principles of general law as govern the banking business.

### **Evolution of Banking Law.**

Before considering the principles of law which apply to banking business, it is necessary to sketch very briefly the evolution of banking law. It may be stated that Indian Banking Law is based to a very large extent, though not entirely, upon the English Banking Law; it is, therefore, necessary to pass in review the main landmarks of the history of banking legislation in England.

Banking Law is a part of the Law Merchant, or as it is sometimes known, *Lex Mercatoria*. *Lex Mercatoria* This *Lex Mercatoria* began to take its shape in the 13th century, and it was based upon the customs of merchants. Gradually these customs were ratified by courts of Law and became a part of the general law which courts were bound to recognize. No doubt, additions were made from time to time. The practice of making bills of exchange payable to order and transferring them by endorsement dates back to the beginning of the 17th century. In 1694 the first banking act which brought into existence the Bank of England was passed. However, some people doubt whether the Act should be called as the first piece of banking legislation, because it was a special statute which governed the Bank of England and did not define laws which were to govern banking business in general. Ten years later, negotiability which had so far been limited to bills of exchange was extended to promissory notes by the passing of the

statute of 3 and 4 Anne c. 9. in 1704 and in 1708 an Act was passed to secure monopoly of note issue to the Bank of England. Throughout the whole of the eighteenth century we find very little of banking legislation. In the wake of the Industrial Revolution industries and commerce made rapid strides and with the emergence of large scale production expansion of credit became vital to the economic development of the country. During that period Banking Law was largely judge-made law, the law which was the outcome of the recognition of certain customs governing banking and commercial practices. Lord Mansfield, whose name is considered perhaps the most important in the history of English Mercantile Law, tried to lay the foundation of English banking and commercial law upon the customs of merchants of the advanced European countries. Even after his death, it was that law, or, in other words, those rulings of Lord Mansfield which were considered the most important and the authoritative pieces of judge-made law on the subject and whenever the law pertaining to banking or commerce was codified, it was based mostly on those rulings or judgments of Lord Mansfield and certain other judges. For instance, the latest codification of the law relating to Bills of Exchange, Cheques and Notes was made in the year 1882. The Bills of Exchange Act itself was based more or less upon those rulings of Lord Mansfield which were, in turn, based upon the customs and usages prevalent at the time. Thus it will be easily realized that Banking Law is very largely based upon customs of bankers.

Speaking generally, the English Law relating to negotiable instruments was applied by courts in India when the contesting parties were Europeans, but, in the case of the Hindus and Moham-madans, their respective Laws were held applicable. As neither the Hindu texts dealing with hundis, nor the Mohammdan books on the subject dealt adequately with the

Law of Negoti-  
able Instruments in  
India.

matter, customs prevailing among merchants of the respective communities were recognized by the courts. In cases when the hundis were in the form of bills of exchange English Law was applicable though the parties were Hindus. The statutes 9 and 10 William III, c. 17 providing for the protest of bills of exchange and 3 and 4 Anne c. 8 declaring promissory notes negotiable were in force in India. Act VI of 1840 and Act V of 1866 were some of the earliest attempts made in this country to regulate the law relating to bills of exchange. In 1866 the Indian Law Commission drafted a bill to codify the law relating to negotiable instruments. About a year later it was introduced in the Governor-General's Council which referred it to a committee. However, as it contained many deviations from the English Law on which it was supposed to be based, many objections were raised by the merchants and the bill had to be redrafted by the committee. This draft, having been circulated among the Local Governments, High Courts and principal commercial bodies, was referred to a Select Committee. However, in 1880 under the orders of the Secretary of State, it was again referred to a new Law Commission which did not make many alterations but suggested certain important additions, one of which was to recognize the local usages relating to the hundis. The bill was then passed in 1881 a year before the passing of the Bills of Exchange Act in England. The Negotiable Instruments Act recognises local usages and certain customs prevalent among Indian merchants. It extends to the whole of British India but does not affect local usages relating to instruments in an oriental language. However, there is no clear indication in the Act whether the local usage of the place where the instrument is made or of the place of payment is to apply when the two differ.

The title of the Negotiable Instruments Act itself is considered misleading as the Act does not deal with all kinds of negotiable instruments. It is for this reason that the

Criticism of the  
Act.



English statute on the same subject is known as the Bills of Exchange Act. The Negotiable Instruments Act, as the preamble shows is intended "to define and amend the law relating to promissory notes, bills of exchange and cheques," whether negotiable or not. Moreover the Indian Act is not even now as comprehensive as it should be although it has been amended several times. Since the passing of the Act, the position is as follows:—In matters which are specially dealt with by the provisions of the Act, the courts in British India are not permitted "to leave the firm ground of the Act and explore the uncertain regions of the Law Merchant. Such resort would be perfectly legitimate in the construction of the provisions of the Code, which are sometimes of doubtful import."\*

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\* The Negotiable Instruments Act by Bhasbyam and Adiga, 2nd Edition, p. 11.

## CHAPTER II.

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### BANKER AND CUSTOMER.

Before examining the relationship between the banker and the customer it appears necessary to explain, as far as possible, the legal meanings of the two terms. The terms have no statutory definitions and the legal decisions on their interpretation, particularly on that of the former, are far from satisfactory.

Much time, ink and paper have been consumed in an effort to define as to what exactly constitutes banking. Even the best authorities have found it rather a hard nut to crack, mostly on account of other functions and services—*e.g.*, dealings in stocks and shares, trusteeship, executorship, etc.—which modern banks perform in conjunction with what is distinctive and characteristic banking business. In most cases either the terms have been defined in negatives or in *petitio principii*—including the term to be defined. For instance, Section 3 of the Negotiable Instruments Act, 1881, is content with laying down that the term 'banker' includes persons or a corporation or a company acting as 'bankers'—not at all a helpful definition. Even an ordinary lexicon would have given us a better idea of banking. Again those responsible for the drafting of the Bankers' Books Evidence Act (1891) and the Indian Stamp Act (1899) have also failed to lay down what exactly is meant by banking business and what conditions should a person fulfil before he can be regarded as a banker for the purposes of either of these Acts. Even the English law has failed to provide us with satisfactory definitions of the terms 'banker' and 'customer.'

The term 'banker' is often used in a very broad and loose sense embracing the capitalist, the financier, the stock

banker, and even high bank officials. There have been many attempts to explain the exact significance of the term but nearly all of them have proved futile. However, the attempt of the legislators in the United States of America is more successful than the attempts made hitherto either in England or in India. The following extract gives the American definition.

"By 'banking' we mean the business of dealing in credits and by 'a bank' we include every person, firm or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid, or remitted on draft, cheque or order, or money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes or where stocks, bonds, bullion bills of exchange or promissory notes are received for discount or sale." This definition which is more like a description than a definition proper, is used in an Act of Congress. To define banking merely as 'dealing in credit' is wanting in precision and exactitude. Strictly speaking, the term banker should apply only to the credit merchant when he uses the credit and funds of others. He is more a capitalist than a banker if he uses only his own credit and funds. The recent Japanese Bank Act of March 1927 which came into effect from 1st January, 1928, defines banks as 'institutions' which carry on operations of giving as well as receiving credit.†

There being no statutory definition to guide, some of the leading writers on Banking Law have, from time to time, attempted to define the terms.

Dr. Herbert L. Hart, author of the well-known treatise, *Law of Banking*, says (p. 1):—"A banker, is one who in the ordinary course of his business, honours cheques drawn upon him by persons from and for whom he receives money on current accounts." This

Hart's definition.

\* *Indian Finance and Banking*, by Findlay Shirras, 2nd impression, p. 336.

† *Commercial India*, November 1928, p. 452.

Definition is based upon the dicta given in a number of decisions beginning with *Foley v. Hill*.\* According to this definition the essential function to enable a person, firm or institution to be regarded as a banker or a bank is that of receiving current deposits against which cheques are to be drawn. This view is supported by the following extract from the judgment of Buckley J. in *In re. Birkbeck Permanent Benefit Building Society*† in the Court of Appeal in 1912. †

"It opened current and deposit accounts and in every essential particular, nay more, I think, I may say, in every particular it did that which the banker does in the ordinary course of banking business and offered its customers all such facilities as a bank usually offers."

This view appears to have received official support in a certain memorandum issued by the Ministry of Labour in England, to the effect that the expression 'bank' shall be construed so as to include only those institutions where 'a substantial part of the business consists of the receipts of money on current account to be drawn upon by cheques.' ‡

This view is further supported by Sir John Paget, another great authority, according to whom there are four essential functions which persons desiring to be called bankers must perform.

"It is a fair deduction," says Sir John, reviewing the *Birkbeck Building Society*§ case and other legal decisions, "that no person or body, corporate or otherwise, can be a banker who does not (1) take deposit accounts, (2) take current accounts, (3) issue and pay cheques and (4) collect cheques crossed and uncrossed for his customers."¶ This

\* (1848) 2 H.L.C. 23.

† (1912) 2 Ch. 153.

‡ *Banker and Customer*, by S. E. Thomas, p. 16.

§ (1913) 22 T.L.R. 219.

¶ *The Law of Banking*, by Sir John Paget (4th Edn.), p. 3.

Definition is fairly exhaustive although it makes no mention of many other important functions of the present day banker which may be put under two heads,\* viz., (1) agency services, comprising the collecting and paying of cheques, bills, promissory notes, coupons, dividends, subscriptions and insurance premiums, acting as trustee, attorney or executor of his customer, and (2) general utility services, e.g., issue of credit instruments, the transaction of foreign exchange business, the acceptance of bills of exchange, the safeguarding of valuables and documents against fire, theft, etc. Apart from this drawback Sir John's definition does not lay any special stress upon the receiving of deposits to be withdrawn by cheques. There seems to be no doubt that according to English Law a person claiming to be treated as a banker should perform the functions as given by Sir John ; but it is not quite certain whether the same definition will hold good in India for the following reasons:—

Firstly, there being no statutes in India corresponding to the English Money Lenders' Act (1900) and Money Lenders' Act (1911) there is no restriction on the use of the word bank or bankers by money lenders. In England, all money lenders are required to be registered and no person can be registered as a money lender under a name which includes the word bank or implies that such a person carries on banking business. In case he makes a false or misleading statement or holds himself out as a banker he is liable to a maximum penalty of imprisonment up to two years or a fine and his transactions can be re-opened if the court thinks they are harsh or unconscionable.

Secondly, there are certain co-operative credit institutions in India, which do not accept money on current account and therefore do not allow cheques to be drawn upon them probably

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\* Banker and Customer, by S. E. Thomas, p. 17.

because, most of their money being used in financing the agriculturist, their liquid resources are generally inadequate for meeting the demands of such depositors. Moreover, current accounts give far more trouble to the bankers than the fixed deposit accounts and as majority of these co-operative credit societies can hardly afford to employ a qualified staff it would be rather risky for them to undertake this branch of business. However, these institutions are generally regarded as banks and it is not quite certain, whether courts in India will deny them the privileges of banks. Even in England sometimes doubts have been raised on the narrow interpretation of the term as will be clear from the following remarks made by Fitzgibbon L. J. in *Shield's case* :\* "If a banker's business were confined to honouring cheques on demand he could not make any profits at all. Those who take money on 'deposit' are just as much bankers as those who hold it on 'current account.'" In India the most suitable definition of a bank so far seems to be the one suggested by the Hilton Young Commission in para 162 of their report. "The term 'bank or bankers' should be interpreted as meaning every person, firm, or company, using in its description or its title 'bank or banker or banking' and every company accepting deposits of money subject to withdrawal by cheque, draft or order." But this also includes the term to be defined.

Before considering what exactly is meant by 'customer' it is advisable to understand how far a person, firm or company which combines the business of banking with one or more other kinds of business can be regarded as a banker. When banking business forms the chief activity of a concern it cannot be denied the privileges to which banks are entitled. But in case banking business is only subsidiary to other business or businesses

Position of companies combining banking business with other kinds of business.

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\* (1901), 1 L.R. 172.



carried on by the concern (e.g., the Army and Navy Co-operative Society Ltd., London, or Messrs. Thacker Spink & Co., Ltd. now in liquidation) it is very doubtful whether they can be regarded as bankers in the legal sense of the term. This view is supported by the following extract from *Shield's case*\* referred to above. "Such a case," said Lord Justice Fitzgibbon "as that of Lebertouche is easily understood. He carried on several classes of business, stock-broking, agency and money-broking, including some banking business. It was held that banking was not his chief business but was only ancillary to it and therefore he was not a banker." In the same case Lord Ashbourne J. says, "If a man carries on other businesses besides that of banking, and if banking is only subsidiary to the other businesses he cannot be regarded as a banker." However, when the two or more kinds of business carried on by a person are equally important it is open to doubt whether he will be entitled to the privileges of a banker.

There is no statutory definition of 'customer' at all. But the rulings of the English Courts on the point are far more clear than those affecting the term 'banker.' The earlier legal decisions on the point, however, are rather conflicting. According to the older view as expressed by Sir John Paget, "to constitute a customer there must be some recognisable course or habit of dealing in the nature of regular banking business. . . . It is difficult to reconcile the idea of a single transaction with that of a customer. The word surely predicates, even grammatically, some minimum of custom antithetic to an isolated act. It is believed that tradesmen differentiate between a customer and a casual purchaser." According to this view a single transaction, or the mere opening of an account does not constitute a customer which implies some recognized course or habit of dealing. It

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\* (1901) I.R. 196.

was thought that if a person gave a crossed cheque to a bank at the time of opening his account he could not be regarded as a customer and that the bank was not entitled to the statutory protection given under Sec. 82 of the Bills of Exchange Act, 1882, in case it was found that the title of the person to the cheque was defective. Later cases, however, do not accept that view and hold that duration or course of dealing is not of the essence of the definition (per Lord Dunedin, 1920 A. C. at p. 68), and that a customer is treated immediately after the banker has accepted and opened his account and has agreed to render him the performance of banking duties whether it be a first transaction or not. In the words of Mr. Justice Bailhache in *Ladbroke v. Todd*,\* 'the relation of a banker and customer began as soon as the first cheque was paid in and accepted by the banker for collection and not merely when it was paid.' The facts of the case as given by Mr. Bernard Campion K. C. in his lecture† are :—

"A firm of bookmakers were claiming against a banker. *Ladbroke v. Todd*. One of the bookmakers' customers, a gentleman named Jobson, had won some money from them, and they posted to him in payment a cheque drawn to his order on the National Bank and crossed "Account of Payee." Then the ubiquitous thief turned up. He removed the cheque from the pillar box and fraudulently endorsed Mr. Jobson's name on it, took it to the defendant bankers, opened an account with them in the name of Jobson, and paid in the cheque on the opening of the account, telling the bank that he wanted it cleared at once. It was cleared that afternoon, and on the following day the thief drew on the account which he had just opened with that forged cheque and decamped and nothing more was heard of him. When the fraud was discovered, Mr. Jobson got a second cheque from the plaintiff for his winnings, and they took an assignment of

\* (1914) 19 Comm. Cases 356.

† Journal of the Institute of Bankers (1925), p. 172.



Mr. Jobson's rights on the first cheque and promptly sued the banker who relying upon Sec. 82 of the Bills of Exchange Act, said that he had, "in good faith and without negligence," collected the cheque for his customer. Of course, two issues arose. First, was this man who called himself Jobson, a customer? The second question was, if he was a customer, did the banker collect the cheque in good faith and without negligence? No one doubted the good faith, but the question was whether he acted "without negligence." Mr. Justice Bailhache held that the banker was negligent. But he was quite clear on the point as to the customer, and said that the relationship began as soon as the first cheque was paid in and accepted by the banker for collection, or, if he might venture to paraphrase it, which put it rather clearer, "as soon as the account was opened." In *Commissioners of Taxation v. English, Scottish and Australian Bank Ltd.*,\* the Privy Council held that the word 'customer' signifies a relationship in which duration is not of essence and includes a person who has opened an account on the day before paying in a cheque to which he has no title. Lord Dunedin J. who delivered judgment said: "A person whose money has been accepted by the bank on the footing that they undertake to honour cheques up to the amount standing to his credit, is, in the view of their lordships, a customer of the bank, in the sense of the statute, irrespective of whether his connection is of long or short standing." This view is not quite inconsistent with an earlier decision of the House of Lords in *The Great Western Railway Co. v. London and County Bank*,† in which it was held that to make a person a customer of the bank there must be "some sort of an account either deposit or current account or some similar relation."

To conclude, then, frequency of transactions may not be an essential feature to constitute a customer but it is true to

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\* (1920) A.C. 683.

† (1901) A.C. 414.

say that his position must be such that transactions may become frequent. The account which establishes the relationship between banker and customer need not necessarily be a current account, as the Crossed Cheques Act, 1876, seems to suggest.

The second requirement is that the dealing must be of a banking nature. This is in contradistinction to the casual services rendered by a banker to persons who have opened no account with him. For instance, if a person occasionally goes to the cashier of the bank and buys a few stamps, gets crossed cheques cashed, or deposits valuables or securities for safe custody, he does not thereby become a customer of the bank as these services are not in the nature of banking business. According to the judgment of the Judicial Committee of the Privy Council in *Commissioners of Taxation v. The English, Scottish and Australian Bank, 1920*, "the contrast is not between an *habitué* and a newcomer, but between a person for whom the bank performs a casual service, *e.g.*, cashing a cheque for a person introduced by one of their customers, and a person who has an account of his own at the bank."

### The General Relation.

The mere opening of an account current with a banker and the banker's acceptance thereof involve  
 Debtor or Creditor. contractual relationship by implication.

According to the old view a banker was usually thought of as a reliable depository. But a mere depository is he who receives a sealed package of valuables for safe custody and undertakes to return it unopened. Banks do act as custodians but that is only a subsidiary function. The mere receiving in of money, keeping it locked up in safes, and repaying whenever demanded would be a job far from remunerative. Again, if the banker acts as a trustee, *i.e.*, receives money

and invests it or otherwise uses it according to the terms of his trust and has to account in detail for everything he has done with it, the function is not of a banker in the true sense of the word. "The relation of banker and customer," as Sir John Paget rightly remarks, "is primarily that of debtor and creditor, the respective positions being determined by the existing state of the account. Instead of the money being set apart in a safe room it is replaced by a debt due from the banker. The money deposited with him becomes his property and is *absolutely at his disposal*, and save as regards the following of trust funds into his hands, the receipt of money by a banker from or on account of his customer constitutes him merely the debtor of the customer (*Foley v. Hill*\*), with the 'superadded' obligation to honour his customer's cheques drawn upon his balance in so far as the same was sufficient and available. The mere fact that a banker invites deposits and is prepared to pay interest on them is proof enough of his intention to make use of it as he likes and earn interest therefrom so as not only to enable him to pay interest to his depositor but also to earn profits for himself. But even if the banker pays no interest or the money deposited he is his customers' debtor and not a bailee, because he undertakes to repay on demand a sum equivalent to the amount deposited with him and the customer has no right whatsoever to claim the identical coins or notes deposited by him with his banker. The latter can pay the amount in any kind of legal tender.

To say that the relationship between banker and customer is that of debtor and creditor is not a complete statement in that one has to add to it that the debt due by a banker to his customer differs from ordinary commercial debts in one important respect, *viz.*, that the general rule by which a request by the creditor for payment is unnecessary does not apply. This exact point actually came for decision in *Joachimson v.*

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\* (1848) 2 H.L.C. 28.

*Swiss Banking Corporation*\* (1921), where it was held that in the case of a debt due from a bank an express demand for repayment by the customer is necessary before the debt becomes 'actually and accruing due,' on the ground that otherwise the banker by offering the money due to his customer would summarily close his customer's account without notice and possibly injure his customers' credit by dishonouring his cheques.

With regard to securities and valuables deposited for safe custody, the banker's position is different. The property in them remains with the customer who can claim them back. For example, when a customer pays into his bank a cheque drawn upon another bank, such a cheque being received by the bank as a B/C (bill for collection) the customer will be entitled to claim the cheque or its proceeds, if the collecting bank fails before it has collected it and credited the customers' account. On the other hand, if the deposit is made for a specific purpose and the banker stops

Trustee in case  
of safe custody  
deposits.

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\* Atkin L. J. (now Lord Atkin) gave a useful summary of the one and indivisible contract created by the account current in the following words:—

"The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch and as such written orders may be outstanding in the ordinary course of business from two to three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so far as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept. Whether he must demand it in writing, it is not necessary now to determine."

payment before applying it to such purpose the depositor cannot claim the money paid and must content himself with his right of proof as a general creditor: (*In re. Barnard's Banking Co.*)\* The case is different, however, if the specific purpose has been partially carried out. "Thus in the case of *Farley v. Turner*† it appeared that a customer of a bank A had £942 at the credit of his account. He paid in a further sum of £707 with a written direction that £500 out of that sum should be forwarded to bank B to meet a bill about to become due. A sum of £500 was sent to bank B, but before the bill became due bank A ceased to carry on business, and the sum of £500 was returned by bank B. The customer claimed back this £500 and it was held that as it had been specifically appropriated, it belonged to him, and not to the general creditors."

When a banker buys or sells securities on behalf of his customer he performs an agency function.  
 Agent of Customer. Similarly when he collects cheques, dividends, bills or promissory notes on his customers' behalf he acts as their agent. Besides, he may also act in various other agency capacities, for example, as a trustee, attorney, executor, correspondent or a representative.

Unless precluded by an agreement, express or implied, from the course of business, a banker is  
 Banker's right to combine accounts. entitled to combine different accounts kept by his customer in his own right, even though at different branches of the same bank, and to treat the balance, if any, as the only amount standing to his credit: (*Garnett v. M'Kewan*,§ *Buckingham v. London and*

\* (1871) 40 L.J. Ch. 730.

† (1837) 26 L.J. Ch. 710.

‡ *Banking and Negotiable Instruments* by Frank Tillyard, 4th Edn., p. 95.

§ (1872) L.R. 8 Ex. 10.

*Midland Bank* \* and *Prince v. Oriental Bank Corporation*.†) The banker can exercise this right, in the absence of any express or implied agreement to the contrary, without giving any notice to that effect, but "there is no legal obligation on the bankers to do so arising either from express contract or the course of dealing between the parties. The customer must be taken to know the state of each account and if the balance of the whole is against him or does not equal the cheques he draws he has no right to expect those cheques to be cashed. There is no usage according to which the customer is entitled to expect his cheques to be honoured at one branch where he happens to have a balance to his credit, when at the same time that balance is counter-balanced by a debit against him at another branch." (*Garnett v. M'Kewan*.‡)

It may be contended that the mere fact that a customer opens two separate accounts is sufficient to make it evident that he intends to keep them separate. But even if that be granted the customer is not at all justified or empowered to utilise a credit balance at one branch for the purpose of drawing cheques on another branch where he has no account or where his account is overdrawn to the full extent of the overdraft sanctioned by the banker. When a customer having two or more accounts at the same office of the bank draws a cheque without specifying the account against which it is drawn the banker can honour the cheque by combining the accounts even if one of them happens to be overdrawn and inform the customer accordingly. However, this right of the banker of combining two or more accounts of his customer is not unrestricted. He can exercise it only subject to the condition that the accounts are the customer's accounts in one and the same capacity. He can have no justification in blending a personal account and a trust account or amalgamating a personal with a partnership account.

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\* (1895) 12 T.L.R. 70.

† (1878) 3 App. Cas. 325.

‡ (1872) L.R. 8 Ex 10, 12.

Secondly, this right is applicable to debts due from the customer and not to contingent debts or liabilities falling due at a future time. Thus, if a banker holds a bill, not yet due, to which his customer is a party liable to pay the amount in case of its dishonour, the banker cannot appropriate the amount of that bill from his customer's account.

### Special Features of the Relationship.

To come to the special features of the relationship between the banker and his customer, the following are the most important :—

I. By opening a current account of a customer the banker undertakes to honour the cheques drawn by his customer so long as his balance is sufficient to allow the banker to do so, *provided that they are presented within a reasonable time after the ostensible dates of their issue.* This duty is also imposed upon him by Sec. 31 of the Negotiable Instruments Act, 1881, which runs as follows :—“ The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque, must pay the cheque when duly required so to do and in default of such payment must compensate the drawer for any loss or damage, caused by such default.” There does not appear to be any corresponding section in the Bills of Exchange Act, 1882, hence one might say that the position of a banker in England in this respect is slightly better than that of his *confreres* in India.

This implied obligation on the part of a banker to honour his customer's cheques drawn on his account current may be extended by an agreement, express or implied, to the amount of overdraft agreed upon, otherwise the banker is not liable for dishonouring his customer's cheque for the meeting of which the latter has not sufficient funds with the former.

Two points need a passing notice in connection with this duty of the banker. They are based upon the customs of the bankers:—1. Unless a cheque is presented within a reasonable time after the ostensible date of its issue it will not be honoured. Generally speaking, a cheque presented six months or more after the date of its issue is considered a stale one. Some banks in England require cheques to be presented within twelve months, but in India a period of six months is generally considered reasonable. The banker, at any rate, must allow a reasonable period during which cheques drawn upon him should be presented and such period may vary in accordance with the custom and practice prevalent among the bankers.

2. The banker on whom the cheque is drawn should have a reasonable time to place the funds paid into the credit of the customer's account before they can be drawn against. The question, what is a reasonable time, depends upon the circumstances in each case. In actual practice generally no difficulty arises as well-organized banks in these days take very little time in making the necessary entries in their books. However, in the absence of a special agreement, express or implied from previous dealings between the banker and his customer, a banker is not bound to credit his customer's account with the amount of cheques or drafts upon other banks sent in for collection before they are realized. Nevertheless, he must place their amounts to the credit of his customers' account within a reasonable time after realization. Generally, when such cheques and drafts are received from customers of known respectability banks in India credit the respective accounts with the amounts before they are collected and honour cheques drawn against uncleared credits. It must, however, be understood that in the absence of a special agreement to the contrary the customer is not entitled to treat cheques sent in for collection as cash and



consequently some banks have a notice printed in their pass books and on their paying-in slip books asking their customers not to draw cheques against uncleared items of credit. In a recent case of *Underwood v. Barclay's Bank*,\* 1924, the court of appeal made it clear that in the absence of an express or implied agreement giving the customer a right to draw cheques against uncleared items of credit a banker is entitled to return such cheques with the mark "Effects not cleared." If, however, the banker is in the habit of crediting such items as cash in the customer's pass book it appears that the customer unless there is a special agreement to the contrary is entitled to draw against uncleared credits and the banker has no right to return such cheques marked "Effects not cleared."

The only other question which remains to be discussed in connection with the duty of a banker to honour cheques is to state the consequence of wrongful dishonour. If a banker, without justification dishonours his customer's cheque he makes himself liable to compensate the customer for injury to his credit: *Marzetti v. Williams*.† The amount of compensation recoverable by the drawer of a cheque from the banker in case of wrongful dishonour is not limited to the actual pecuniary loss sustained by reason of dishonour. The words "loss or damage" used in Sec. 31, referred to above, do not mean only pecuniary loss, but also *loss of credit* or *injury to reputation*. Thus, the customer is entitled to claim substantial damages even if he has sustained no actual pecuniary loss, provided he can show that his credit has suffered by the dishonour. Theoretically, proof of actual injury is not necessary to warrant substantial damages; *Robin v. Steward*.‡ If the customer is a trader or a businessman, these damages may

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\* (1904) 2 K B 465, 471.

† (1830) 1. B. and Ad. 415.

‡ (1854) 14 C.B. 595.

be substantial; if he is an ordinary private individual, the courts require some special grounds showing actual damage to credit before upholding any substantial claim. For instance, in a recent case of *Sterling v. Barclay's Bank Ltd.*,\* where the bank had wrongfully dishonoured its customer's cheque Mrs. Sterling was entitled to substantial but reasonable damages, which were minimised because Mrs. Sterling had had two cheques dishonoured before and also because a witness for the plaintiff had said that "people in that particular trade did not think much of dishonouring cheques as they lived from hand to mouth."

It may be added that the amount of damages will not necessarily be large, only if the amount of the cheque dishonoured is large, as, a person is supposed to suffer more in credit if his cheque for a small amount is dishonoured than in the case of one for a large amount. In assessing the damages for injury to credit the courts give due consideration to various factors such as financial position and business reputation of the customer and the customs of the trade to which he may belong.

In the absence of an agreement, however, no such duty rests upon the banker to honour bills accepted by his customers and made payable by the banker. But it may be stated that bankers as a rule are willing to render this service and therefore even a very slight evidence would be accepted to establish an agreement on the part of the banker to honour his customer's bills domiciled with him. For instance, if a customer pays to his banker a sum stating that it is for the purpose of meeting a bill and the banker receives it without informing the customer that it will not be so applied, this will be considered as sufficient evidence of an agreement on the part of the banker to apply the money as directed. If the banker has

Payment of domiciled bills

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\* The Accountants' Journal, September 1930, p. 367.

habitually paid his customer's bills, he will be taken to have agreed to continue to do so as long as he has sufficient funds to the credit of the customer's current account and has given no notice to his customer of his intention to the contrary.

II. Another special feature attaching to this relationship is that bankers may, in absence of an agreement to the contrary, retain as a security for a general balance of accounts *any goods and securities bailed to them*.\* This right to retain goods is known as lien. The term 'general lien' which bankers, factors, wharfingers, attorneys of High Court and policy-brokers may have is used to distinguish it from the particular lien of a craftsman on goods on which he has expended labour, time or money such as the piece of cloth made out of the yarn supplied to a weaver by his customer when the latter has not paid the weaving charges. A general lien, therefore, confers a right to retain goods etc. in respect of the general balance due by their owner to the banker. It extends to all securities and goods placed in his hands by his customer, which are not specifically appropriated. The banker can avail himself of them to liquidate a general balance due from the customer either at the time when the security was deposited, or at any time, while it lawfully remains in the bankers' hands. The Indian Law, besides permitting the banker to exercise his lien in case of all those securities which come into his possession in his dealings as a banker with his customers, also extends the right even to goods, unless, there is a contract, express or implied, inconsistent with the lien.

As far back as the middle of the 19th century it was judicially decided that "bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer unless there be an express contract or circumstances

Lien, an implied pledge.

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\* Indian Contract Act, S. 171.

that show an implied contract inconsistent with lien," *Brandao v. Barnett*.\* This general lien of the banker is regarded as something more than an ordinary lien; it is an implied pledge. The distinction is not material in the case of bills, notes and cheques, as under Sec. 43 of the Indian Negotiable Instruments Act, the banker being regarded as a holder for value to the extent of the sum in respect of which the lien exists, can realize these when due; but in the case of other negotiable instruments, e.g., bearer bonds, coupons, and share warrants to bearer, coming into the banker's hands rendering them liable to the lien, the character of a pledge enables the banker to sell them on default if a time is fixed for the repayment of the advance, or, where no time is fixed, after request for repayment and reasonable notice of intention to sell: (*Burdick v. Sewell* †) and apply the proceeds in liquidation of the amount due to him. The right of sale does not, however, extend to other securities such as title deeds or documents of title to goods. In such cases he has only the right to retain the instrument till the amount due to him is paid. Even in case of negotiable securities lien cannot be exercised if the instruments were placed in the banker's hands for a special purpose only.

No special agreement is necessary to create the right of lien though it may be and often is expressly conferred by agreement. If it is to be definitely excluded it can be done by mutual agreement or by circumstances which are inconsistent with the right of lien. Where securities are deposited for securing a particular loan no general lien can be exercised upon them. For instance, a deposit of ornaments or securities with a banker as security for debts due from his customer to a banker, is subject to the banker's lien for the customer's general debts owing to the banker unless the customer can prove an agreement on the part of the banker

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\* (1846) 3 C.B. 519.

† (1884) 13 Q.B.D. 159

to give up his lien. No such lien can be claimed, however, in case of security restricted to a specific amount of debt. Where a customer had deposited a life policy with his bankers accompanied by a memorandum of charge to secure overdrafts not exceeding £4,000 together with interest, commission and charges, Mr. Justice North held that the bankers' lien was limited to the amount specified: *In re. Bowes, Earl of Strathmore v. Vane*.<sup>\*</sup> If the securities so deposited are left in the banker's hands after the loan secured is cleared off, these securities may become subject to the general lien, as the customer, by leaving them may be taken to have redeposited them.

<p>Banker's Lien and the Safe Custody deposits.</p>	<p>valuable, such as plate, securities etc. Such articles being regarded as those left with the banker for a specific purpose, are not subject to the banker's general lien, and a contract to the contrary is implied (<i>Brandao v. Barnett</i>.) This is the law either because the banker in receiving the securities or valuables for safe custody is supposed to be acting as a bailee and not as a banker, or because the receipt for such purposes involves an implied contract inconsistent with the assertion of lien. If, however, negotiable securities deposited for safe custody have to be dealt with by the banker in the ordinary course of his business as a banker, then the lien will arise. In case the securities and valuables are put in a box and kept with the banker merely for safe custody then the banker being in the position of a bailee cannot in any circumstances have a lien on them. If the bailor has no title to the valuables deposited the bailee cannot exercise any right of lien, and if it can be shown that they had been stolen or misappropriated, the banker holding them will be compelled to hand them to the true owner,</p>
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<sup>\*</sup> (1886) Ch. D. 586.

whether or not the receipt of the defaulting customer is obtained. The issue of the safe custody deposit receipt alone is sufficient to imply a contract to the contrary as the banker thereby admits that the deposits are for a specific purpose.

In *Lecse v. Martin*\* it was held that a banker, who according to the usual custom in London between bankers and stock brokers made advances upon the security of share certificates and other property deposited with him, did not have a general lien on boxes and their contents deposited with him for convenience and safe custody by the stock broker. Similarly, in *Bank of Africa v. Cohen*,† the court held that where documents had been originally delivered by a customer to a bank for safe custody and the customer subsequently became a party to a void agreement purporting to charge them, the banker did not have any lien over those documents.

Where bonds are deposited with a banker who is authorized to cut off the coupons and collect them the lien attaches to the bonds as well as coupons because they come into his hands as a collecting banker. But if the bonds are deposited merely for safe custody and the customer cuts off the coupons and hands them to the banker for collection the lien can be exercised only on the coupons and their proceeds which come into his hands as a collecting banker. No lien, however, will arise in respect of the bonds. In *Jones v. Peppercorne*,‡ the general lien was upheld because the brokers had been given powers to sell the securities deposited. But no lien will arise over the bonds, if there is evidence from the terms of the receipt given by the banker that the securities are received by him expressly for safe custody, as, for example, if the receipt specifically acknowledges that the bonds are to be held by the banker for safe custody. The general

\* (1873) L.R. 17, Eq. 224.

† (1909) 2 Ch. 129.

‡ (1858) 28 L.J. Ch. 158.

lien applies to bills, cheques, moneys entrusted or paid to him as well as goods that come into his hands in his *character as a banker*.

No lien can arise in respect of *documents or valuables left inadvertently with the banker*, or on property which is placed in his hands with the object of covering an advance which is not granted. The banker will not get such lien if he knows at the time of the deposit of the securities or valuables that they are not the property of his customer. He could enforce his lien against the true owner provided the latter had given his consent or was aware that the securities were being deposited with the banker. It is usual that in the case of negotiable securities the banker is able to enforce his lien although the securities may belong to a third person, as he is not then necessarily affected with notice of adverse ownership.

A banker has no right of lien in respect of money deposited by a customer or a credit balance earmarked for a specific purpose. The lien could be exercised if the banker had no express or implied notice of the purpose of the deposit. The implied general lien for balance of account is not allowed where securities are specifically deposited as cover for amounts owing. Thus, on the dishonour of a documentary bill, the bank is not entitled to apply the security accompanying the bill to any other debt due from the customer for whom the bank discounted the bill: *Latham v. Chartered Bank of India*.<sup>\*</sup> Whether securities deposited to cover a specific advance and after repayment of that advance, remaining in the bankers' hands, are subject to a general lien for a balance due to the banker, seems somewhat doubtful. It was doubted at any rate in *Jones v. Peppercorne (supra)*; but in *Wilkinson v. London and County Bank* it was assumed throughout that a customer who deposited securities as cover

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<sup>\*</sup> (1874) 17 Eq. 205.

for particular advances was entitled to claim them back on the payment of those advances notwithstanding that he was still indebted to the bank. But if the securities so deposited are consciously left in the banker's hands after the amount secured is cleared off, these securities may become subject to the general lien as the customer by leaving them with the banker may be understood to have re-deposited them. On the other hand, if, upon sale of the securities deposited for securing an advance, there is a surplus remaining, the banker may have a right to set off such surplus as against other sums due on general account. (*In re. London and Globe Finance Corporation*).\*

No lien arises on the private credit balance or the deposit account of a partner in respect of a debt due from the firm as the credit on the one hand and the liability on the other do not exist in the same rights. Similarly, a banker cannot set off any credit balance of a partnership account against moneys advanced to one or more of its partners on their private account.

The bankers' right of lien is not barred by the Law of Limitation. The effect of the Limitation Act is to bar the personal remedy and not to discharge the debt. Consequently it does not affect property over which the banker has a lien. However, in the case of securities relating to land, in which the remedy is barred after twelve years the right of lien cannot be exercised in England.

No lien arises in respect of an advance of a specific amount made for a definite period until the due date, as there is no debt owing till then ; nor can the banker retain moneys of the customer against bills discounted by him for the customer, but not yet due, except perhaps in the case of the customer's bankruptcy.

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\* (1902) 2 Ch. 416.



III. As the disclosure of matters relative to the customer's financial position may do considerable harm to his credit and business the banker should take scrupulous care not to disclose the state of his customer's account. This obligation on the part of the banker, although recognised in practice was not legally imposed on him till 1924, when *Tournier case*\* added this term to the implied contract between banker and customer, whenever and however that relationship was constituted. It requires that the banker *must not disclose the condition of his customer's account except on reasonable and proper occasions*.

What is to be regarded as a reasonable and a proper occasion? Answering questions by a proposed guarantor, or under compulsion of law can certainly be cited as instances of proper occasions. Similarly, when an overdraft is guaranteed, it would seem that the guarantor has a right to be informed of the extent of his liability and the banker is justified in disclosing to him the condition of the customer's account as far as is necessary for this purpose. It was considered an uncodified duty of a banker to answer inquiries regarding his customer's general position and character put to him by a person contemplating business relations with that customer: *Robshaw v. Smith*.†

It was believed by some that in answer to the inquiries from bodies such as the Trade Protection Societies the banker might give general information regarding his customer's financial position while others were of opinion that no exception should be made in their cases. The general view accepted until recently that the banker would not make himself liable for slander or libel in any case where he *bonafide*

Secrecy of the state of customer's account

Reasonable and proper occasions.

Limitations on banker's obligation as regards secrecy.

\* (1924) 1 K.B. 461.

† (1878) 38 L.T. 423.

answered such inquiries made by persons really interested, provided he confined his answers to the facts within his knowledge, has been modified by the decision in *Tournier v. National Provincial and Union Bank of England*.\* Before this there had been no conclusive or effective judgment on the question of limitation, if any, on the banker's obligation to maintain secrecy with regard to his customer's account. The effect of this decision may be summarised as under :—

It is an implied term of the contract between banker and his customer that the former will not divulge to third persons, without the express or implied consent of the latter, the state of his accounts. For instance, in cases where the customer has given his banker as a reference the latter will be fully justified in answering all the trade references invited by the customer. Another exception to the banker's obligation of secrecy with regard to his customer's account is when he is compelled to disclose the state of the account by order of the court. Again the banker will not make himself liable for any slander or libel if he divulges the state of his customer's account when he is under a public duty to disclose (*e.g.*, in cases of danger and treason to the state. Lastly, when the protection of the banker's own interests legally requires it (*e.g.*, action against the customer for money due) he will not make himself liable by disclosing the state of his customer's account.

Bankers have, of course, always acted honourably upon the principle of treating their customers' affairs in confidence and only disclosing them in exceptional and justifiable circumstances. All the same there is a well recognised practice among bankers themselves generally described as 'a common courtesy'† whereby a bank desiring information (*e.g.*, as to the credit of a proposed

\* (1924) 1 K.B. 461.

† See Appendix A form No. 5.

## BANKING LAW AND PRACTICE IN INDIA.

guarantor or surety, or of an acceptor of a bill under discount, or of a bill accepted by the customer of another bank) enquires of the other bank. Information given in response to such enquiries is given confidentially and is worded with scrupulous care so as to disclose no more than the general position of the customer. Such cases are, it is presumed, supported as permissible by reason of the implied consent of the customer derived from evidence of a well-known practice among bankers and the circumstances giving rise to the enquiry. In case the banker decides to give information regarding the state of his customer's account, he should first see that he adheres to facts only as disclosed by the account and not to the rumours that may be afloat regarding the credit of his customer. Secondly, such information should be given only to a fellow banker or to a person authorized by the customer to receive such information, and that also in confidence and without prejudice. It should be as far as possible very general so as to avoid any liability, because a banker, his officials and servants are, as to any claims for defamation or for fraudulent misrepresentation, in the same position as any other member of the community. In addition to the liability to the customer on account of unjustifiable disclosure of his account, the banker will make himself liable to the party to whom the information is given, to compensate for the loss which the latter may suffer on account of having relied upon the information, provided it is proved that the banker gave the information knowing it to be wrong or without having justifiable reason to believe it to be true. For instance, if with a view to oblige his customer, the banker knowing fully well that his customer is in financial difficulties, gives a very favourable report on him to a person who relying on the report extends credit to the customer and loses money, the banker will be liable to compensate him for the loss he suffers. On the other hand, if he speaks too unfavourably an action for libel may be brought against him by the customer.

The obligation on the part of the banker to observe secrecy does not end with the closing of the account ; but in England in order to make the banker liable for damages the disclosure must be in writing and signed by the banker against whom damages are claimed. To escape liability bankers in England would omit to sign letters and memoranda in which confidential reports were given. But it has been legally recognised that the signature of a bank *employee*, say a *manager*, to any representation on which fraud is based is not a sufficient signature to support an action against the *bank* for any false representation as to the credit or financial ability of another person.

With a view to give only such information as is absolutely necessary while returning cheques drawn upon them unpaid, bankers generally use the following abbreviation:—"N/S," which means 'not sufficient funds' or "R/D," which stands for 'refer to drawer.' Markings with the same effect are: "E. N. C." (effect not cleared); "N. E." (no effects), etc.

IV. Another important special feature of this relationship is that as long as the relation of banker and customer exists the banker has the right to claim incidental charges. In England and in some other countries, if the customer is unable to keep a remunerative credit balance he is required either to pay a certain sum per year or a certain percentage say  $\frac{1}{8}$  to  $\frac{1}{4}$  p. c. on the turnover of his account during the year. In India bankers charge Re. 1 to Rs. 3 on overdrawn accounts per half year, but such charges do not contribute an appreciable amount to their profits. The chief reason for this distinction is that in England the customers make use of cheques much more freely than they do in India hence the trouble to which bankers in India are put is comparatively less than that experienced by bankers in England. It may also be

due to the fact that banks in India wanting to encourage the opening of current accounts either make no charge or only a nominal one.

V. The relationship also implies payment of interest with half yearly rests. In the absence of an express or implied agreement to the contrary only simple interest is allowed on debts due to non-bankers, but as it is the practice of bankers to charge interest every half year, they can charge compound interest unless there is an agreement to the contrary. However, some bankers charge interest on overdrawn accounts at the end of every quarter or month. This can be justified only if the customer has agreed to pay interest quarterly or monthly, otherwise the banker is not entitled to do so.

To charge compound interest.

VI. The last though not the least important feature of this relationship is that even if three years go by without the customer's drawing any money or receiving interest on his balance, or receiving an acknowledgment of the debt from his banker the debt is not time-barred. This feature, distinguishing between debts due from bankers to their customers and the ordinary commercial debts is the result of the decision in *Joachimson v. The Swiss Banking Corporation*. The facts of the case were:—A partnership having been dissolved by death on August 1st, 1914, the question arose whether the sum of £ 2,321 standing to the firm's credit on current account at that date, no demand for the payment having been made, constituted at that time, an immediately recoverable debt affording a cause of action to the firm for money had and received. And the opinion of the court, as enunciated by Bankes L. J., was "We all think a demand is necessary." This ruling has changed entirely the law on the subject according to which in the case of a promise to pay on demand no demand was considered necessary and

Limitation period in case of current deposits.

therefore the period of limitation was regarded to have commenced from the date of the debt and not from the date of the demand. It is for this reason that Mr. Justice Roche, a commercial lawyer and a judge of great repute who tried the above case in the first Court decided that the amount was immediately recoverable and could be sued for without any previous demand. The judgment of Bankes L. J. referred to above will have an important effect upon the dormant balances lying with the bankers for a long time, as it will no longer be possible for them to claim the benefit of the limitation period from the time of the receipt of those deposits.

With regard to the effect of the Law of Limitation in the case of fixed deposits the opinion is divided. According to some no distinction should be made between fixed and current deposits, *i.e.*, in the case of fixed deposits also the period of limitation will not run until the customer has made a demand upon the banker asking him to pay the deposit. According to others, if the customer has given notice to the banker that he (the customer) will withdraw the deposits after a specified time, the limitation period will begin to run from the expiry of the specified time. However, if the return of the deposit receipt, which may take the form of a mere receipt or a voucher, is made a condition precedent to the withdrawal of the money, its return fixes the starting point of the period of limitation. But in case of an overdraft granted by a banker to his customer the period will run from the time the overdraft is made use of unless it is extended by an acknowledgment in writing by the debtor or his agent. If the money be paid on deposit account, time, it seems, does not begin to run until demand, and the same in the case of money or goods left for safe custody.\*

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\* (*Foley v. Hill*), 2 H.L. Car. 28.

### CHAPTER III.

#### BANKING ORGANISATIONS.

“Fit though few,” is as true in banking organization as in any other sphere. Instead of having many petty institutions each one independent of another, it is better to have the banking business of a great country concentrated in the hands of a small number of banks with many branches. No doubt, banking business can be carried on by individuals, by partnerships (sometimes called firms) and corporations, in these days of large scale business individuals carrying on banking in the proper sense of the word are in a very negligible minority which is diminishing in importance as is evident from the following table :—

##### Banks in England and Wales.

Year	Number of Joint-stock banks in England and Wales (excluding the Bank of England)	Deposits (in millions of £s)	Number of Private banks (firms)	Deposits (in millions of £s)
1895	99	455	38	70
1905	59	627	12	27
1915	37	992	7	33
1921	20	1974	5	48
1924	18	1813	4	30
1927	17	1892	4	30
1930	16	1976	4	26

Unfortunately similar statistics regarding Private Banks in India are not available. Still, it may be hazarded that the

private banker if not yet extinct is doomed to fall in the background with the rapid progress of the Joint Stock banks owing to their greater stability and more scientific management. The development of Joint Stock banks in some of the leading countries may be well realized by the following table\* :—

Country	Banks (Total Number)†	Capital and Reserve (in millions of £s)	Deposits (in millions of £s)
United States ...	30,100	1,052	8,000
United Kingdom ...	9,550	180	2,225
Japan ...	5,900	110	410
Canada ...	3,450	25	450
Australia ...	2,500	59	374
India ...	659	17‡	163

### Reasons for the dwindling importance of private banks.

From the above two tables it is quite clear that the Joint Stock principle is being increasingly applied to the banking business in India as well as most of the important countries of the world. Why is the private bank on its last legs while the Joint Stock bank is progressing? The reasons are not far to seek. Firstly, production on a large scale has led to a demand for credit facilities for very large amounts which the private banks with limited resources are generally unable to meet. The capital of a private bank is bound to be comparatively small as it is limited to the amount subscribed by its partners whose

\* A Reserve Bank for India and the Money Market, by B. E. Dadachanji, p. 13.

† The figures given above, though not quite up-to-date are believed to be for a recent year (probably 1927). It may, however, be remarked that the numbers in Column 1 against United Kingdom and India are those of banking offices and not banks.

‡ Excluding those of the Exchange Banks.



number cannot exceed ten (Indian Companies Act, 1913, Sec. 4). The Joint Stock banks, on the other hand, can obtain a large amount of capital as there is no limit to the number of shareholders in such institutions, and because, their shares are of small denominations, a provision which enables persons of small means to buy their shares on which liability is generally limited to the extent of their face-value. In the case of private banks, on the other hand, only persons who can invest fairly large amounts can become their members. Moreover, as the liability of the partners of a firm is generally unlimited, persons unable to take an active part in the business of a private bank are, except in very rare cases, reluctant to become partners of such concerns. In England according to the Limited Partnership Act, 1907, however, the liability of one or more members of a firm can be limited to the amount of the capital he or they have contributed to the firm, provided that there is at least one general or unlimited partner who will be liable to the full extent of his separate estate for the debts of the partnership. A limited (or a sleeping) partner is debarred from taking part in the management of the firm, or he will become liable as a general partner for all debts and obligations of the firm contracted while he so takes part in the management. He may, however, occasionally inspect the account books of the firm and advise his other partner or partners.

Secondly, banking is a very delicate business; the whole of its structure rests on the foundation of the confidence of depositors and once that is shaken the entire structure is liable to fall to the ground. The large subscribed capital of the Joint Stock banks and the publicity which they give to their accounts go a long way in inspiring and strengthening this public confidence in them and therefore, they are able to attract much larger amounts as deposits than the private banks whose prosperity to a large extent depends upon their local reputation.

Thirdly, the bigger the bank the more effectively the law of averages applies to its transactions, particularly, to its losses. The larger the total assets the smaller is likely to be the proportion of losses and consequently greater is the security for depositors of big Joint Stock banks.

Fourthly, Joint Stock banks with their large working capital are in a position to meet the requirements of customers who sometimes keep large balances and at other times need overdraft facilities for large amounts which is not possible for a private bank with limited resources to provide. Transactions of such a customer may sometimes upset the business of a private bank but in the case of a Joint Stock bank having many big customers the law of averages will apply. This has led to the concentration of capital in a few hands, a tendency which is evident in almost every department of commercial activity.

In spite of the several advantages, *viz.*, the saving in administrative costs, the greater scope for concerted action, the greater degree of efficiency and uniformity, the tendency towards amalgamation is not an unmixed blessing as according to some it may lead to the whole banking business of a country becoming the monopoly of one or two banks. However, if the movement of concentration of this business is not carried beyond reasonable limits it strengthens the position of the amalgamated institutions. On the other hand, amalgamation in banking business may make competition in banking keener than ever, since it will be the aim of the larger banks to be equally represented throughout the country, however small the place and few the opportunities for banking expansion. The safety of an individual bank is likely to become linked with the safety and prosperity of the system as a whole. A member of an amalgamation of banks, though individually sound enough, cannot but succumb, once it becomes known that the amalgamated concern is a part of a chain that has become weakened to the breaking point. In such a case

when the head office will close the branches must also automatically pull down their shutters, though many of them may be solvent so far as their local business is concerned. An independent banking institution, when entering into affiliation with a group or chain, should consider most carefully whether such affiliation will result in increased strength or be a source of weakness. An announcement in the House of Commons in 1924, by the Chancellor of Exchequer forbade any further amalgamation among the existing Joint Stock banks in England.

### **The Joint Hindu Family System.**

In spite of the expected development of the Joint Stock banks, even to-day, except in our large cities, banking business is largely carried on by private banks which are mostly owned by Joint Hindu families, and not by partnerships. The most prominent of these are the Vaishyas, the Jains, the Marwaris scattered in all parts of India, the Nattukottai Chettis in the Presidency of Madras, the Khatris and Auroras in the Punjab, and the Multanies in Sind, Gujarat, and the North West Frontier as well as the United Provinces. The system bears striking resemblances to our modern Joint Stock banks in more than one respect. It continues from time to time, it has a distinct existence as known to law, and the departing of persons or the coming in of persons makes not the slightest difference to the continuity of that body, just as any changes in the staff of a banking corporation do not affect its existence. It is represented, like banks, by managers (kartas) who carry on the business of the corporation. All the individual members of the family exist only in the genealogical tree and never in actual life. Generally it is the male line that is taken into account.

The Joint Hindu family system enables the capital	of a family to remain undivided which
Its advantages.	helps to inspire public confidence in it.

Moreover, its members can keep in close touch and maintain personal relation with their customers, and, in this, they certainly have an advantage over the Joint Stock banks carrying on their business as public companies. Nevertheless, it is regrettable that most of the Indian private banks, unlike those in England and other occidental countries have not yet adapted themselves to modern requirements. As an illustration it may be mentioned that until recently few private bankers in India issued printed cheque forms, probably with a view to save their cost. Although their time-honoured hundi system is still in existence, it is to be confessed, that it cannot stand any comparison with the western up-to-date cheque system. The private banks in England, on the other hand, supply their customers with printed cheque books and render such other services as are performed by the Joint Stock bank. Further still, although not legally bound to do so the English private banks, with a view to inspire public confidence have begun to issue balance sheets duly audited by well known accountants.

In England, from 1708 until the passing of the Joint Stock Companies Act of 1857, banking partnerships of not more than six partners were allowed. The Act of 1857 raised this number to ten at which figure it stands even to-day but the increase did not affect the note-issuing banks which even now are governed by the provisions of the Bank Charter Act of 1844. Sec. 18 of this Act requires them to send in certain returns regarding their note-issues to the Commissioners of Stamps and Taxes.

As in England, banking firms in India cannot have more than ten partners.\* If they exceed this limit they become illegal and cannot enter into contracts: they can neither sue, nor be sued.

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\* The Indian Companies Act, 1913, Sec. 4 (1).

Everyone carrying on the business of banking in England and Wales is required to make annually, within the first sixteen days of January, a return to the Commissioners of Stamps and Taxes of his name, residence, occupation and the name of the firm under which he carries on his business and of every place where he carries on such business.\*

The above information is usually published under the authority of the Commissioners of Stamps and Taxes in newspapers circulating in the locality, or localities, in which the private bank carries on its business. The object of this publicity is to keep persons dealing with the bank informed of its position. In this country, private bankers are not required to supply any such information, but it would, nevertheless, be very desirable that statements showing their financial position should be regularly issued by them and published in the newspapers of the part of the country in which they carry on their business.

Where the business is to be carried on by more than one person the terms of the agreement between the partners are stated in the Partnership Agreement. Sometimes, on account of the most friendly relations existing between the partners at the time of the starting of the business, no proper agreement is made, but generally, the absence of a proper agreement in writing has caused more harm than good. There are certain distinct advantages in putting the terms in black and white. Firstly, there may be a genuine misunderstanding of one or more of the terms by some of the partners. However, when they are put in writing, all the partners can read them carefully at their leisure, and in case of some misunderstanding no difficulty arises to get the same cleared as at that time, the relations between the partners are

Private banks to supply certain information.

Its publication

Written partnership agreement—its advantages

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\* Sec. 21 of the Peel's Act of 1844.

cordial, and therefore, the spirit of give and take rules supreme. Secondly, the effect of the proposed change is not fully measured in terms of money before the business has been in existence for some time, and therefore, the question of a particular partner benefiting to the extent of a considerable amount by the change either in the terms or, in their interpretation, does not arise. Thirdly, in case of any dispute between the partners, the written terms enable the same to be settled without any prolonged litigation which is bound to result by the attempts of different partners to prove their different versions of the terms of the partnership agreed upon.

The partnership agreement should state clearly the terms agreed upon as regards the persons who are to form the partnership, its capital and in what proportion it is to be provided, the rate of interest, if any, to be allowed on the partners' capital, division of profits and losses and restrictions, if any, to be placed on the powers of one or more partners. It is also very desirable to have in the partnership agreement provisions for dissolution as well as contingencies such as the retirement, or, the death of a partner, and the admission of a new partner.

We give below a few general principles of the law of partnership as far as they govern the relations between the partners of a banking firm and its customers.

Main clauses of the Partnership Agreement.

The three main principles which govern the legal relationship between the partners of a banking firm and its customers are :—

1. " Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member binds his co-partners to the same extent as if he were their agent duly appointed for that

Important principles of the law of partnership.

A partner's power to bind co-partners.

purpose.”\* If a partner in carrying on the partnership business in the usual way does something he thereby *prima facie* binds his firm. Suppose, for instance, Vaidya and Joshi, are two partners of a banking firm “Vaidya and Joshi” and Vaidya in the ordinary course of the business of the firm endorses a bill in the name of the firm and discounts it with Desai without Joshi’s knowledge. If the bill is dishonoured, then, on account of Vaidya’s endorsement on the bill being on behalf of the firm, both Vaidya and Joshi will be liable as members of the firm. Though the firm is not interested in the transaction it will be liable on the bill provided the holder did not know the circumstances under which the bill was endorsed. Similarly, if a sum of money is received by Joshi on behalf of the firm without Vaidya’s knowledge and is appropriated by the former to his own use the partnership will be debarred from disowning its receipt.

There is, however, an exception to this rule. The partners may by agreement between themselves restrict the power of any of their number to bind the firm. For example, in the above instance Joshi alone may be authorized to endorse bills in the name of the firm. Then if such a limitation of Vaidya’s authority is known to Desai who discounts the bill with Vaidya’s endorsement on behalf of the firm, it will bind Vaidya alone and not the firm: *Collen v. Wright*.† If the authority of a partner is so limited by an agreement, which fact is not known to third parties dealing with the firm, the firm cannot escape liability. However, the act done by a partner, on behalf of the firm must, to bind the firm, be within the scope of the ordinary business of the firm. Thus, in the case of a banking firm, if a partner purports to do something on behalf of the firm which is entirely outside the scope of its business, he alone and not the firm will be liable. For example, in the instance

An exception to the above rule.

\* Indian Contract Act, Sec. 251.

† (1857) 7 E. & B. 301, 26 L.J.Q.B. 14.

given in the preceding paragraph if Vaidya anticipating a rise in the price of cotton makes a forward purchase of 500 bales on behalf of his firm, the firm will not be liable for the loss, in case there is a fall in the price of cotton, on the ground that *speculation in cotton is no part of the business of a banking concern.*

2. "Every partner is liable for all debts and obligations incurred, while he is a partner, in the usual course of business, by or on behalf of the said partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such a firm for anything done before he became a partner."\* A new partner does not make himself liable on contracts entered into by the firm before he became a partner, unless he expressly assumes liability for them. After his retirement or death a partner or his estate does not thereby cease to be liable for debts or obligations incurred by the firm before his retirement or death unless its creditors or depositors expressly release the outgoing or deceased partner, or until their deposits are paid or renewed with the newly constituted firm. Suppose, for instance, that one Mr. J. C. Bose deposits Rs. 500 for one year with a banking firm named Mukerjee & Co. and Mr. P. Mukerjee, a partner of the firm, dies after six months. If on the maturity of his deposit, Mr. Bose either renews his deposit or transfers it to his current account, then Mr. P. Mukerjee's estate will not be liable to Mr. Bose in case of the failure of the firm, if Mr. Bose is aware of Mukerjee's death at the time of the renewal or transfer of the deposit. The liability will be extinguished, on the ground that the renewal or transfer of the deposit will be treated as a new contract with which Mr. Mukerjee's estate has nothing to do. In such a case the old contract is supposed to be replaced by a new one. The

Liability of outgoing and incoming partners.

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\* Indian Contract Act, 1872, Sec. 249.



two principles stated above govern the liability of partners for debts and obligations of the firm whereas the third given below relates to compensation in case of any loss incurred as a result of negligence or fraud on the part of a partner in the course of the business of the firm.

3. "Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm."\* The fraud complained of must be one committed in the ordinary course of the partnership business. For example, if a partner of a banking firm advised one of its customers to invest money in certain securities, as a result of which the latter suffers a loss, the firm will not be liable, on the ground that it is not in the ordinary course of banking business to advise customers as to how they should invest their funds. The following extract from the judgment in *Bishop v. Countess of Jersey*<sup>†</sup> indicates clearly the position :—

"It is said that it is the practice of the bankers generally to invest the money of their customers for them. But it is notorious that their practice is not to act for their customers as money scriveners or agents generally, to find investments for their money, but if a customer sends them, with a power of attorney, a letter of instructions directing them to sell a particular sum of stock, they will do so; or if the customer wishes a particular investment of the funds, and directs them to lay out his money in the purchase of a particular stock, and debit him with the amount, they will do so, and when they do so, be it observed, they do so ordinarily without a cheque, but on a particular letter of instructions.

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\* Indian Contract Act, 1872, Sec. 250.

† (1854) 23 L.J. Ch. 483.

But how does that practice apply to this case? It is not within the scope of the business of bankers to seek or make investments generally for their customers."

However, if a partner of a banking firm receives money from a client of the firm with instructions to purchase certain specified securities on his behalf but invests it in some other securities the firm will be liable to make good such loss as the customer may thereby suffer. To fix the other partners with liability, notice of the breach of trust must be brought home to them individually.

### **Banking Companies or Corporations.**

Another kind of banking organization in India is known as Banking Companies or Corporations. We shall now consider the important principles of law which govern this type of organisation.

Such corporations may be formed in pursuance of a special Act of Parliament or of the Indian Legislature or of Royal Charters or Letters Patent, or may be registered under the Indian Companies Act, 1913. In modern times very few companies are created by Royal Charters or Letters Patent. Instances of banking companies created under special Acts of Parliament or of Indian Legislature are the Bank of England and the Imperial Bank of India the latter being governed by the Imperial Bank of India Act of 1920 and not by the provisions of the Indian Companies Act. Although the liability of the shareholders of the Imperial Bank of India like that of the shareholders of any other Joint Stock bank registered under the Indian Companies Act, 1913, is limited, the word 'limited' does not form a part of its name which is not the case with the banks of the latter class.

Banks formed  
under special Acts  
or Royal Charters.

As already explained the private bank is gradually receding into the background and the Joint Stock bank is coming to the forefront as the most popular and up-to-date form of banking organisation. The leading Joint Stock banks registered under the Indian Companies Act, 1913, are given below in their chronological order :—

Banks Registered under the Indian Companies Act.

- (1) The Allahabad Bank Limited.
- (2) The Punjab National Bank Limited.
- (3) The Bank of India Limited.
- (4) The Central Bank of India Limited.
- (5) The Indian Bank Limited
- and (6) The People's Bank of Northern India, Limited.

As most of our Joint Stock banks belong to this class it is necessary to deal at some length with the principles of law and practice which govern banks of this class.

The Indian Companies Act, 1913, is applicable alike to Joint Stock banks and to other companies registered under it. However, there are certain provisions of this Act which distinguish banking from other companies.

### **Provisions of the Indian Companies Act distinguishing banks from other Companies.**

I. We have already referred to the distinction between banks and other companies made by Sec. 4 of the Indian Companies Act, 1913, which lays down that, if more than ten partners wish to carry on banking business, they must form themselves into a company to be registered under the said Act; whereas in the case of other kinds of business, as many as twenty partners can carry on their business as a firm. This distinction is largely due to the desirability of

Maximum number of partners in a banking firm.

banking business being carried largely in the form of registered Joint Stock banks.

II. Sec. 136 (1) of the Act lays down: "Every Company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked G.\* in the Third Schedule or as near thereto as circumstances will admit." In case a company fails to comply with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

It is also provided that the statement referred to above should not only be submitted to the Registrar of Joint Stock Companies, but copies thereof must be continuously exhibited in conspicuous places in the head office and all the branches of a bank. By such means persons dealing with a Joint Stock bank are enabled to have exact information as to its assets and liabilities and can thus form an opinion about its financial position. The same section further lays down that every member and every creditor of a bank is entitled to get a copy of the statement on payment of a sum not exceeding eight annas.

It will thus be seen that a banking company has to make and publish a statement in a prescribed form twice a year.

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\* See Appendix A, Form No. 1.

This can firstly be accounted for by the fact that a banking company receiving deposits of money from its customers must keep them informed with regard to its financial position with a view to inspire public confidence which is not so necessary in the case of a company carrying on other kinds of business. That the banks themselves including even some private banks have awakened to the advantages of giving publicity to their accounts will be evidenced from the fact that Joint Stock banks in some countries have begun to publish their accounts once a month instead of twice a year and the private banks which are not required by law to file any statement are issuing duly audited statements of account just like the Joint Stock banks. Secondly, greater publicity of the accounts of a banking company is required because the failure of a bank may shake the public confidence in other banks to such an extent that the merest whisper or the vaguest rumour may be enough to start virulent raids on them although they may be carrying on their business on fairly sound lines. Thirdly, in view of the very intimate relationship between credit organisations and trading and industrial concerns it can easily be imagined what serious consequences result from bank failures.

III. According to Sec. 133 the balance sheet of a banking company should be signed by the manager (if any) and by at least three directors where there are more than three and by all when there are not more than three directors. In the case of other companies the signatures of only two directors are considered sufficient for such purposes and where a company has only one director his signature and that of a manager (if any) is regarded as sufficient. In case of failure to comply with this requirement there shall be subjoined to the balance sheet a statement signed by directors or director explaining the reason for non-compliance with the provision required by law.

Authentication of  
the statement.

IV. Another feature which distinguishes banks from other companies is that under Sec. 138 of the Indian Companies Act, 1913, a local government can order investigation into the affairs of a banking company on the application of shareholders holding not less than one-fifth of the shares issued as against the minimum of one-tenth of the shares issued in the case of non-banking companies. The need for this distinction can be well understood when it is known that a banking company is far more susceptible to a change in the public confidence than other companies, if its credit is allowed to be assailed. The requirement that an application for the investigation of the affairs of a bank must be supported by the holders of at least one-fifth of the subscribed capital acts as a check on frivolous applications due to petty jealousies or malice on the part of a few shareholders.

V. Another distinguishing feature is that in the balance-sheet of a banking company debts for which the bank holds mere personal securities, and debts which are fully secured should be shown separately. The object of this distinction obviously appears to be that the public may be acquainted as to how far a bank's advances are secured by securities other than the personal security of the borrowers. It is, however, doubtful whether the object for which this distinction is made is in fact achieved to any appreciable extent.

VI. The last distinctive feature of the company law which applies to Joint Stock banks is that under Sec. 145 of the Indian Companies Act, Sub-sec. 3, where a banking company has branches carrying on business beyond the limits of India it is sufficient if the auditor is allowed access to such copies and extracts taken from the books of account of the branch, as

Access to the copies of extracts from account books of branches beyond India sufficient for audit.

have been transmitted to the head office of the company in British India.

Perhaps it may not be out of place to observe that the form of balance-sheet known as the Form F of the balance-sheet prescribed by the Indian Companies Act for banks and insurance companies is considered to be far from satisfactory. Some of the critics have gone to the length of cynically remarking that the balance-sheet is an instrument by which the directors conceal from the shareholders the state of the bank's affairs. The ideal form of balance-sheet should be such that even at a cursory glance one should be able to form an approximately exact estimate of the financial standing of a banking concern. But the present position is such that even those conversant with book-keeping are unable in many cases to gauge from the balance-sheet the actual financial position of the bank. It is alleged that some banks with a view to give an impressive idea of their position call in certain loans and retain some large deposits just before the closing of half yearly account only to be returned at the beginning of the next half year. An ideal form of balance-sheet should leave hardly any scope for this manipulation of accounts or window dressing.

The fixed, current, and savings bank deposits should be shown separately so as to enable a person studying the balance-sheet of a bank to form a more reliable opinion about the sufficiency, or otherwise, of the reserve of a bank. It is also desirable that the loans, secured or unsecured, raised by a bank from other banks should not be lumped along with deposits but should be shown separately. In order to enable its customers to have some idea about the nature of the bank's investments the law should lay down a rough classification of securities, such as Government and semi-Government loans, debentures

The form of  
balance sheet un-  
satisfactory.

Suggested chan-  
ges in the form.

and bonds of industrial companies, immovable property, shares in subsidiary companies, distinguishing between those quoted on Stock Exchanges and those that are unquoted. The securities should be required to be shown at cost or market price, whichever is lower.

The loans granted by a bank to Limited Companies, the directors of which are also directors of the lending bank are required to be separately shown but similarly loans granted to Limited Companies in which any of the bank directors are members of the managing agents' firm should also be shown separately. Loans to directors, managing director, manager and secretary, including the sums repaid by them during the currency of a financial year should be stated separately in the balance sheet duly classified and should not be mixed up under one heading with the loans granted by the bank to its other officers and employees.

It was the common practice of banks to write off bad debts and make no mention of them in the balance-sheet. Or even if they were not written off a special provision was made out of profits or reserve to square off the bad or doubtful debts. The procedure was held illegal by the Bombay High Court in 1927 which held that as long as the bad debts were not actually expunged so long must the provision be shown on the other side of the balance-sheet, as "Provision for Bad and Doubtful Debts." As a result of this a notification was issued by the Government of India, Department of Commerce, on 29th March, 1927, as follows:—

In column headed "Capital and Liabilities" to the sub-head "Provision for Bad and Doubtful Debts" the words and brackets "(in the case of companies other than banks)" shall be added.



In the column headed "Property and Assets" in the sub-head "Book Debts."—

(a) After the words "Book Debts" the words and brackets "(other than bad and doubtful debts of a bank for which provision has been made to the satisfaction of the auditors)" shall be added.

This alteration exempts banks from disclosing bad and doubtful debts, if such debts have been provided for to the entire satisfaction of the auditors. Whether this reform is a step forward or a 'slide back,' is yet doubtful. The present writer is inclined to think that the original provision was useful because it required the banks to bring to the notice of the shareholders the actual amount of bad and doubtful debts, and it could be ascertained on enquiry whether such debts were due to carelessness or neglect of duty on the part of the management. The Indian Central Banking Enquiry Committee, however, suggest in para 727 of their report that such debts should be provided for and if any balance is left unprovided, it should be indicated in the Balance Sheet.\*

<p>Advantages enjoyed by Private Companies.</p>	<p>Joint Stock banks may be registered either as public or private companies. Private companies have the following advantages over public companies†:—</p>
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- (1) They need not file a statement in lieu of prospectus.
- (2) They can commence business and exercise borrowing powers as soon as they are incorporated and need not comply with the other requirements enforced upon other public companies before doing so.
- (3) They are not required to forward a statement in the form of a balance-sheet to the Registrar.

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\* For the form of Balance Sheet as suggested by the Indian Central Banking Enquiry Committee, see Appendix A, Form No. 1-A.

† Davar's Elements of Indian Company Law (1921), pp. 63 and 64.

(4) No reports are required to be filed by them as in the case of public companies.

(5) Their balance-sheets need not be audited and certified by auditors.

(6) The requirements as to "minimum subscription" do not apply to them.

(7) They are free from requirements in regard to the appointment of directors by the Articles, as well as their consent to act as such, and to take up and pay for the qualification shares, if any, as applying to public companies.

(8) Though they need not disclose their financial position to their rivals, as they are not compelled by law to file their annual balance-sheets with the Registrar, they are required to disclose the amount of their paid-up capital and indebtedness secured by mortgages and charges.

(9) They are not required to file the Statutory Report with the Registrar of Joint Stock Companies.

They are also subjected to certain restrictions as make a private company a very unsuitable form of corporation for the purpose of carrying on banking business. The following are the restrictions put on private companies :—

Restrictions imposed on Private Companies.

(a) the right to transfer shares is limited ;

(b) the number of its members is limited to fifty exclusive of persons who are in the employ of the company.

(c) The private companies are prohibited from inviting public to subscribe for any share or debentures of the company and are required to observe such restrictions, limitations and prohibitions.

### **Points arising at the starting of new Banks.**

We now pass on to the consideration of certain important points which arise in connection with the starting of new banks.

The law does not lay down any restriction as to the selection of the name of a company except, that firstly, it should not be similar to or identical with that of a company already in existence, and secondly, a company shall not be registered by a name which contains any of the words "Crown," "Emperor," "Empress," "Empire," "Imperial," "King," "Queen," "Royal" or such other words as may imply the sanction, support, or approval of the Crown or Government of India or a Local Government except where the Governor-General in Council signifies his consent to the use of such words as part of the name of the company by an order in writing under the hand of one of the secretaries of the Government of India.

As regards the first restriction it should be remembered that the mere similarity of the name will not be considered a sufficient ground for the refusal to register it as long as the use of such a name does not injure the business of the existing firm or company. Thus if the name of a proposed bank is similar to a company not engaged in banking business there should be no objection to the registration of the new bank on the ground of the similarity of names.

Leaving aside the legal restrictions regarding the name it is desirable that name should not be only simple and easy to remember but also indicative of the particular branch of the business in which the proposed bank is going to take a predominant interest. For instance, if the proposed bank is started to finance industries the word industrial should form a part of its name.

As to the amounts of the capital authorized, subscribed and paid up of a bank the laws of this country do not lay down any minimum or maximum. In the United States of America, the minimum capital of a bank to be registered under the National Bank

Acts is fixed as follows:— \$ 25,000 for places having not more than 3,000 inhabitants; \$ 50,000 for those towns whose population exceeds 3,000, but not 6,000; \$ 100,000 for towns with population between 6,000 and 50,000 persons and \$ 200,000 for places with a population of more than 50,000. The law provides that a bank cannot be started in Japan with a capital of less than a million yen but an exception is however made in the case of small towns with a population of less than 10,000 inhabitants where the capital of a bank may be 500,000 yen or more. In the case of banks to be started in large cities the capital shall be such as the finance member will designate but in no case shall it be less than two million yen. The minimum capital required in Canada is \$ 500,000, half of which shall have been paid up before a bank can commence business.

From the above it will be clear that the larger the population the greater should generally be the capital of a bank. Of course in addition to the question of population, other factors such as the class of customers and the business which the bank proposes to carry on, should determine the amount of capital a bank should have.

As to the division of capital into shares, it will be noticed that the old practice of having shares of large denominations in almost all the countries of the world has been replaced by the practice of having shares of comparatively small denominations. This is partly due to the fact that the promoters of modern banks desiring to have a large capital have to approach even persons of moderate means, and also because they want to enlist the support of a large number of persons for their banks. The people also buy these shares of small denomination very readily as their liability in case of the failure of the banks is limited only to the extent of the face value of the shares held by them.

Denomination of  
shares.

The laws as well as the practice of certain countries, such as the United States of America and Germany, are in favour of the payment of the whole or the major part of the capital, whereas, in England, the bank shares are very seldom paid up in excess of 50 % of their face value. As in other respects India generally follows in the footsteps of England, in recent years, Indian banks have also adopted the policy of calling only about half the amount due on their shares and the balance is kept as a reserve liability to be made use of in case of the failure of a bank. The Central Bank of India Ltd. has like the leading English banks converted its uncalled capital into Reserve Liability so as to afford greater security to its creditors as it will be available in case of liquidation at any time.

## I

### The Directorate.

In order that a Joint-Stock company should carry on its business it is the duty of the shareholders to elect a certain number of directors from their own body and to place in their hands the control of the concern. Often the first directors are appointed by the Articles and the others are elected at the annual general meeting—a certain proportion retiring by rotation each year and their places being filled by election. Whatever may be the nature of the business of the company the directors must be such persons as enjoy confidence of those with whom the company may have to deal; yet as the success of a banking company depends almost entirely on public confidence, it is absolutely essential that only capable persons should be elected as directors.

“A bank director,” says Gilbert,\* “should be in good pecuniary circumstances. It should be a most wholesome

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\* The History, Principles and Practice of Banking, by J. W. Gilbert, Vol. I, p. 397.

regulation, were it stipulated in all deeds of settlement that no bank director should be privileged to overdraw his account. The great facility which directors enjoyed of raising money from overdrawing their bank accounts, has in some instances, resulted in extensive commercial disasters." The pecuniary qualification of a director of a company is to hold a certain number of its shares. Although this is by no means an important qualification, it is always required on account of the well recognized principle that a stake in the undertaking is the best guarantee of fidelity to the company's interests. Titled persons should not be appointed as directors merely on account of their titles. A well-known doctor who was on the top of his profession accepted the chairmanship of the Board of Directors of a bank, and it is no wonder, the bank had to close its doors, because, although fully competent to examine the pulse of his patients and prescribe suitable medicines, he was neither qualified to feel the pulse of the money-market, nor able to supervise the work of those who were managing or, in fact, mismanaging the bank.

To quote Mr. Bagehot, "One of the most sure principles" to be kept in view at the time of appointing suitable persons as directors "is that success depends on a due mixture of special and non-special minds—of minds which attend to the means, and of minds which attend to the end. The success of the great Joint Stock banks of London—the most remarkable achievement of recent business has been an example of the use of this mixture. These banks are managed by a board of persons mostly not trained to the business, supplemented by and not annexed to, a body of specially trained officers who have been bred in banking all their lives. These mixed banks have quite beaten the old banks, composed exclusively of pure bankers; it is found that the board of directors has greater and more flexible

Mixture of special  
and non-special  
minds.

knowledge, more insight into the wants of a commercial community, knows when to lend and when not to lend better than the old bankers who had never looked at life, except out of bank-windows."\* These words are as true to-day as they were in Bagehot's times.

Besides having the general qualifications, *viz.*, sound judgment, prudence, commonsense, strict integrity and uprightness, the directors should be well up in the business the bank proposes to take up. For instance, if the bank is to take particular interest in financing the textile industry, persons having connection with that industry will be most useful, provided they satisfy the other requirements. Being more in touch with the leading textile concerns they will have a fair knowledge of the financial position of such concerns. If the bank's business extends over a large area, it is desirable that, as far as possible, all the important centres should be represented on the board of the bank.

It is generally considered undesirable to have on the directorate persons who are directors of more than one bank. In the United States of America the Clayton Act of 1914 forbids this 'interlocking of directors.' It provides that no person should be a director or other officer or employee of more than one member bank of the Federal Reserve System if such a bank has deposits capital, and surplus aggregating more than 5 million dollars. Sec. 39 (2) of the Imperial Bank of India Act of 1920 lays down :—  
 "No person shall be qualified to act as a governor or as a member of the Local Board if he holds the office of director, provincial director, promoter, agent or manager of any Joint Stock bank established, having a branch or agency, in British India, or advertised as about to be established, or to have a branch or agency in the British India : provided that the disqualification

\* English Constitution, 2nd Edition, page 197.

shall not apply to any person being a director of a Joint Stock bank, who may be nominated as a governor under the provision of the clause (iii) of sub-section (i) of Section 28."

It would give a very erroneous idea of the position and Their legal functions of directors to speak of them as position. merely trustees, except in a modified sense. Rather, they are "commercial men managing a banking concern for the benefit of themselves and the other shareholders." They hold a legal position which is partly that of the agents and partly that of the trustees. In allotting and issuing shares, debentures and stock, making calls and passing transfer of shares they act as trustees for the shareholders, while in conducting the business of the bank they act as its agents. In this latter capacity they can bind the bank only for such transactions as are not *ultra vires* the bank. Generally speaking, every company, and especially a banking company, has one main object, with several minor ones clustering around it for the easy attainment of the main object.<sup>1</sup> But in the absence of an expressly stated provision in the object clause of the memorandum it will be *ultra vires* the company to undertake to do any kind of business not provided for in the memorandum. Towards the end of the object-clause there is often found a general proviso, e.g., "and to do any other kind of business that the directors may think proper." Such a clause is essential as the directors must have a free hand and a large discretion to deal with the exigencies of the commercial situation and to extend and consolidate the bank's business. But they are to use this discretion so long as they keep within the limits set by the Company's Memorandum and Articles. They are not authorized in any way to undertake work of a nature different to that which the company is authorized to do by the main object-clause, unless there is an express provision for the same in the object-clause. The directors, as trustees of the powers given to them by the shareholders, are required to exercise those powers as carefully as possible in the best interests of the company.



The directors are not to be held liable for mere errors of judgment, still less for being defrauded ; all  
 Civil liability. that the law requires of them is that they

should be faithful in their duties as agents of the company. Their Civil Liability may be classified under the following three heads :—(i) their liability to those dealing with the bank, (ii) their liability to the shareholders of the bank and (iii) their liability to the bank itself. Liability under the first head will arise when the directors of a banking company enter into contracts which are not binding upon the company on the ground of their being *ultra vires* the company. For instance, if the directors of a Joint Stock bank take a bullish view of the cotton market and make a forward purchase of 1,500 bales of cotton on behalf of the bank, no claim for a possible loss in the transaction can be maintained against the bank on the ground that it is no part of the business of a bank to speculate in cotton. Anything done *ultra vires* the bank cannot be ratified even if all its shareholders are willing to do so. Such a contract, however, may be binding on the directors who actually enter into it, on the ground that a person who induces another to enter into a contract with a third party by an unqualified assertion of his being authorized to act as agent for such third party is answerable to the party who is so led to make the contract for any damages which he may sustain by reason of the assertion of authority being untrue : *Collen v. Wright*.\* The same will be the case if a director endorses or draws a bill without making it clear that he is acting as an agent of the company. For instance, if a bill is endorsed by a director in the following manner :—H. L. Avari, Director of The New Indian Exchange Bank Limited, he can be held liable because the endorsement does not make it clear that the director acted as an agent of the bank, though in case the endorsement was in fact made on

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\* (1857) 8 El. and Bl. 647.

behalf of the bank he can claim compensation for any loss he may suffer for a casual mistake in endorsing.

Under the second head, directors are liable to the shareholders for any misrepresentation or any false statement in any prospectus or report which they may issue. They make themselves personally liable to persons who induced by statements contained in such reports, subscribe to the shares of the bank. Similarly, if a person is led to give credit to a bank on account of some misrepresentation on the part of any one or more of its directors, and his money is lost, he has a valid claim against the director or directors responsible for the misrepresentation. The directors are criminally liable for falsification of company's books, and for this or any other criminal offence the court in winding up may direct a prosecution : but the court will not as a rule interfere with the discretion of the directors honestly exercised in the management of the bank's affairs.

Under the third head, directors are liable to the bank, and this liability can arise in the following three different ways:—

1. The directors must not accept presents in cash or shares, or in any other form from the company's vendor, nor must they make any profit in the matter of their agency without the knowledge and consent of their principal, the bank. They must not, in other words, put themselves in a position in which their duty to the bank and their own interest clash or even may clash. They must account to the bank for any secret profits made by them. If, for example, a payment is made to a director to induce him to sanction a loan to a customer, the bank is entitled to claim the money so paid to the director as money received by the director for, and on behalf of the bank, and held by him in trust for the bank.

2. A director is also liable for misappropriation as well as misapplication of the bank's money. An instance of such misapplication would be the payment of dividends out of the share capital, and if the directors authorise the payment of such dividends they will be personally liable to the bank and bound to refund any moneys so paid out to the shareholders. They will also be held guilty of 'misfeasance' or breach of trust and held liable to the bank when they return capital to the shareholders, or spend money of the bank in 'rigging' the market or in buying the bank's shares, or paying commission for underwriting the shares of the company (except to the extent authorized by the articles). All who join in the misapplication are jointly and severally liable to the bank to replace the sums so misapplied. Sometimes the financial position of the directors guilty of misfeasance is so hopeless that both the shareholders and creditors are reluctant to spend money on prosecuting and bringing them to book as they are responsible for the state in which the company finds itself, owing to their mismanagement, manipulation of accounts or fraud. Such directors should not however be allowed to go scot free and must be prosecuted in the interests of the investing public.

3. Loss due to gross negligence of any one of the directors may similarly be recovered in certain cases from the directors guilty of such negligence. The extent of negligence which makes the directors liable can be gauged from the following extract from the judgment of Lindley M. R. in *Lagunas Nitrate Co. v. Lagunas Syndicate* \* where he said: "The amount of care to be taken is difficult to define; but it is plain that directors are not liable for all the mistakes they may make, although if they had taken more care, they might have avoided them: See

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\* (1899) 2 Ch. D. 435.

*Overend Gurney & Co. v. Gibb.*\* Their negligence must be not the omission to take all possible care, it must be much more blameable than that; it must be in a business sense culpable and gross. I do not know how better to describe it." The indemnity clause generally put in the Articles of Association enabled the directors to escape their liability in cases of proved neglect of duty but the new English Companies Act has declared such clauses as void. It has, however, empowered the court to relieve a director who is proceeded against for negligence or breach of trust if it appears that he acted honestly and reasonably, *i.e.*, 'in good faith and without culpable negligence.' It will not be just to hold a director, who habitually abstains from board meetings, liable for the acts of his colleagues, because he is not bound to attend all the board meetings.

Liability of directors under the Indian Companies Act.	The directors of a bank registered under the Indian Companies Act, 1913, are also liable under the following provisions of the said Act :—
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Failure to put up a sign board.	Sec. 74 (1) provides that "If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company who knowingly or wilfully authorises or permits the default shall be liable to the like penalty."
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Use of the full name of the company.	(2) "If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of
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\* (1872) 5 E. L. A. 480.

any bill-head, letter paper, notice, advertisement or other official publication of the company or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundreded rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company."

Sec. 75. (1)... "Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up."

Amounts of sub-  
scribed and paid-up  
Capital to be pub-  
lished with that of  
authorized Capital.

(2) "Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to fine not exceeding one thousand rupees."

Sec. 76. (1) "A general meeting of every company shall be held once at least in every year and not more than fifteen months after the holding of the last preceding general meeting, and if not so held, the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees."

Failure to hold  
annual general  
meetings once a  
year.

(2) "When default has been made in holding a meeting of the company in accordance with the provisions of this

section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company. "

**Sec. 123.** (1) " Every limited company shall keep register of mortgages and enter therein all mortgages and charges specifically affecting property of the company giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of security to bearer) the names of the mortgages or persons entitled thereto. "

**Register of mortgages and charges.**

(2) " If any director, manager or other officer of the company knowingly or wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine of not exceeding five hundred rupees. "

It may be argued that the fines, penalties, prosecutions and even imprisonments with which the law bristles may daunt even the habitual company promoters from proceeding with their floatations. But no matter, how rigid the laws may be, men of the right calibre, intellectually and morally, are sure to sail clear of all the legal shoals and shallows.

Although the directors have the supreme control of a bank its actual business has to be entrusted to other officers who are usually full-time employees of the bank, and therefore it is necessary to consider the qualifications, the scope of authority and the liabilities of such officers.

## II

### **General Manager.**

The term " Manager " or " General Manager " is generally used in one and the same sense, but is distinguishable from " Branch Manager. "

The person who performs the work of a manager is a *de facto* manager and therefore comes within the meaning of the term 'officer' as used in the Indian Companies Act, 1913.

Generally it may be said that the manager of a bank should, as far as possible, possess, in addition to having practical experience and theoretical training, all the good qualities of head and heart in order to do justice to the requirements of his important position. However great the technical knowledge and however wide the experience a bank manager may have it is the way he makes use of these instruments which will prove him to be competent or otherwise. His success in some cases may be due to his charming manners which are hard to resist or a virile and forceful personality and mental capacity sure to impress those who come in contact with him. Or again he may be quick and responsive with a special capacity for active help. But the gifts which will make him certainly a popular and successful manager are sobriety, sympathy, self-confidence and decisiveness, together with a powerful personality which depends on several factors, such as character, personal appearance, a cheerful countenance, cleanliness, etc. It is true that clothes do not make the man but they make all that is seen of him except his hands and face during the business hours. A pleasant temperament and courteous manners are qualities which, if possessed by the manager, will prove a valuable asset to the bank.

Essential qualities.

Besides the general qualifications given above a bank manager must possess the following essential qualities :—

1. Absence of bias, whether religious, social or political, is essential, and whilst having regard to what human nature is, total absence of such bias may not be obtainable, a bank manager must always remember that the religious, social or political views of his clients are no concern of his, nor must he show any favour to his friends. He should as far as possible treat all

customers alike and should not be afraid of any one of them ; nor should he place himself under undue obligation to any one. He should be honest in intention as well as in fact to all his customers big or small, rich or poor, shrewd or ignorant.

2. A bank manager must always be quick to perceive and vigilant to note every change in the circumstances of his customers and must take care to suppress the slightest tendency towards laxity on his part. Despatch is the soul of business and " He who hesitates is lost," is wonderfully true in the banking profession. He should be capable of saying 'yes' or 'no' and should not try to disguise his fear of relying upon his own judgment under the pretext of mature deliberation. But this does not mean that if the manager is in doubt as to the safety of a transaction he should be afraid to express his opinion. Rather, he should give the benefit of doubt to the bank.

3. Another quality which the General Manager of a bank should have is to be reluctant in giving advice on a subject on which he is not fully competent. In fact, he is under no obligation to advise, but if he takes upon himself to do so, he will incur liability in case he does so negligently. Similarly, when he has to reply to an enquiry from a fellow banker regarding the financial position of his customer he must be very careful that he gives no opportunity for any action being brought against him for misrepresentation or libel by the enquiring bank or the customer respectively. He should be scrupulously careful in meeting such situations : and his letters and reports should be concise, clear and courteous as far as possible. He should not sacrifice either lucidity or courtesy on the altar of brevity.

4. He should be able to control the staff and act through others. To carry on the management efficiently he has to depend upon capable assistants and clerks. He should therefore be able to choose suitable substitutes to whom he can



delegate duties of detail, since his mind and energy should be free to deal with the larger question of policy. A general manager cannot be expected to do different things. His own time should be available for work of important nature. He has under him Chief Accountant who looks after the accounts, Superintendents in charge of different departments, and Superintendent of Branches. He has to get work done by them and to supervise the working of the whole net-work of branches which may be spread over a large area.

5. Lastly, he should cultivate most cordial relations with his rivals and be very loyal to any understanding he may have with them.

It must also be remembered that the manager of a bank should be free from certain defects. Firstly, Defects to be avoided. he should be free from the habit of being indecisive as not only the customers of a bank cannot afford to lose their precious time but also because he will find it impossible to get through his work. For instance, if a bank manager is unable to make up his mind within a reasonable period about the proposals placed before him the work will go on accumulating and this will result in his being compelled either to decide about them without proper consideration or to curtail his business.

Secondly, he should not lack in firmness of his opinion. It is not at all desirable that when he has decided against the entertainment of a particular loan application he should, on the persuasion of his customer, change his mind and grant it. Not only will this lead to considered opinion being set aside in favour of persuasion by a customer but will also result in the waste of a considerable portion of his precious time as the customer will put forward different arguments and pleas in order to change the manager's opinion if it is known to him that the latter is not firm in his opinion.

The general manager of a bank is its general agent. In the exercise of his authority he is controlled by the directors. However, he will bind the bank by his acts not only when they fall within the scope of the authority given to him but even when they exceed the authority, provided in the latter case they are within the scope of his apparent authority and the party claiming the benefit of those acts has no knowledge of the restrictions placed upon the authority of the manager. This view is supported by the following remarks of Sir Montague Smith J., made in *Bank of New South Wales v. Oveston*\*: "The duties of a bank manager would usually be to conduct banking business on behalf of his employers, and when he is found so acting, what is done by him in the way of ordinary banking transactions may be presumed, until the contrary is shown to be within the scope of his authority; and his employers would be liable for his mistakes, and under some circumstances, for his frauds in the management of such business."

### Liabilities of a Manager.

The liabilities of a general manager may be classified as follows:—

(1) A manager of a bank is bound to be reasonably diligent in his office. In case of default, he will be liable to compensate the bank for any loss it might suffer except where the terms of the agreement lay down that he is not to be held liable for any loss sustained by the company as a result of his carelessness. But, in any case, if the loss is the result of his wilful neglect or default, he will be liable: *Allahabad Bank v. Mackenzie*.†

(2) The general manager is also liable to account for profits which he makes in connection with his duties to the bank; for instance, if he gets a commission for giving accommodation to a

\* (1879) App. Cas 270, 289.

† (1923) Case No. 5145 of 1922, Bombay High Court.

customer of the bank. The manager will also have to refund to the bank the commission, if any, received by him for arranging the amalgamation of the business of his bank with that of another. In *General Exchange Bank v. Horner*\* Lord Romilly M. R. said: "He was a manager bound to consult the shareholders' interest solely, and he cannot, in my opinion, retain himself a pecuniary benefit obtained by him in his character of manager, not known to, and not sanctioned by, the shareholders who employed him."

(3) The general manager being an officer of a bank is like its directors liable under Sections 74, 75, 76 and 123 of the Indian Companies Act, 1913, stated above.

The authority of a branch manager is ordinarily confined to the local transactions of the branch. He has powers to call in money advanced by the branch under his charge but not such as may have been advanced by other branches or by the head office. He should never commit the fatal mistake of putting the blame of turning down a loan application, on the head office when he knows all the time that he should never have submitted the proposal.

### **Bank Building, Stationery and Appliances**

A bank should have its premises according to its status. The bigger a bank the grander should its building be. This is not only because a bank building provides a convenient and more or less a permanent place of business but also because an impressive and a magnificent building acts as a kind of advertisement. It should be within easy access of its customers and preferably in the commercial centre of the city where the bank proposes to carry on its business. Looking to the several advantages and the indispensable nature of the bank building it would be

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\* (1870) L. R. 9 Eq. 485.

useless to argue that the capital sunk in the premises is unprofitably invested and remains locked up with a very small return. However, bankers as a rule write down the value of their premises out of their profits. For instance, one of the most valuable sites in London, the site and building of the Bank of England, does not appear in the statement of the Bank of England's assets. Similarly, the various buildings owned by the Imperial Bank of India in different parts of the country are included in the item of Dead Stock in the bank return, but their book value is very likely below their market value.

Besides the usual ledgers, bills receivable and bills payable registers, the bank has also to keep  
**Stationery.** pass books, cheque books, paying-in-slip books, voucher forms and several other printed forms, *e.g.*, the opening of account application forms, forms for advising the customers about the receipts and payments, the guarantee forms, the indemnity forms, etc., etc. The letter papers have the address, the telegraphic address, the telephone number, and the head office address printed or embossed at the top. They should be neat but not showy.

All banks, particularly those which have to do exchange  
**Bank telegraphic codes.** business, must have a private code of their own which is necessary not only for reducing the cost of telegraphic and cable charges but also for enabling their branches and agencies to be sure of the genuineness of such messages. After codifying the message a private word is generally added to enable the addressee to be sure of its authenticity. Such private codes are kept in the charge of only high bank officials.

In addition to the usual office appliances, some of the  
**Appliances.** leading banks in the Western countries have installed machines for keeping accounts. As the movement towards mechanization of bank accounts

is assuming more and more in importance, we propose briefly to consider its *pros* and *cons* and the scope and chances for its adoption by the Indian banks.

“The old order changeth yielding place to new.” The new inventions of the mechanical age which are gradually emancipating the world from the long age thralldom of the routine drudgery are now pursuing their way in the banks with increasing momentum. Neat, accurate, up-to-the minute records are taking the place of the old fashioned pen-and-ink ledgers and pass books.

The use of such appliances has enabled banks in western countries to counter-balance the increased expenditure resulting from the greater services demanded by the public owing to the keen competition among modern banks. The following are some of the important advantages resulting from the mechanization of bank accounts:—

1. A bank adopting the mechanization of bank accounts can handle greater volume of work with less staff, and open additional branches without materially augmenting its staff. The resultant economy of floor space is sure to bring about relief of the congestion existing in the bank offices where it is impossible to extend the premises. The number of desks and pedestals required will be less. By the use of new ledgers the cost of stationery and other supplementary books and pass books will be substantially reduced.
2. The customer will be able to obtain a complete statement—showing all transactions and the balance to date—at a moment's notice or at regular intervals by arrangement. The inevitable delays occasioned by the old system of having to leave the pass books at the bank for several days whilst they were being *written up* will be eliminated.

3. All ledgers will be balanced daily and with greater speed, accuracy and economy. The whole of the accounting work will be compassed by fingering keys, pressing buttons and manipulating switches with infinite relief to the eyes and brains of the clerks entrusted with routine duties. Human beings are liable to err but machines have an exactitude which can never be surpassed even by the most scrupulous of the clerks. However accurate the work done under the old system, it can never be so correct as that done under the new one because the new system is virtually a self-balancing and self-correcting one. Besides, the machine is neater and more legible in its work.

4. Clerks will obtain a comprehensive knowledge of banking more quickly than if they spent years in listing and adding clearings and posting ledgers, as in the past. Work which is mechanical, quasi-automatic and which does not involve a high degree of skill can be relegated to the machines. The clerical staff thus released will be rendered available for work for which greater use of intelligence, ability, and skill is required. The staff will become much more flexible because any clerk will be able to use the machines when the regular operators are away through illness, holidays, or other causes.

#### **Disadvantages.**

The installation of ledger-posting machines will bring about reduction in staff on a large scale, particularly the services of those employed to write up the pass books either from the vouchers or from the entries in the ledger will have to be dispensed with. No doubt proportion of the displaced officers may be utilized to meet the constantly growing volume of bank work, yet there will be stoppage of recruitment till the adjustment to new conditions. However as the work required of a banker is

incessantly increasing in scope as well as in volume, the staff released can be used to attack this problem. Secondly, the change to mechanization will take a considerable time for the adjustment to the new system. Thirdly, there is the uncertainty, whether the customers will accept the new method of keeping their accounts by the banks.

In the case of banks in India the pen has not yet been suppressed by the machinery for the following reasons :—

Reasons for the backwardness of Indian banks in the use of accounting machines.

Firstly, because India is handicapped by a belated start in Joint Stock banking. The scope and volume of work to be handled by banks whose capital is much less than the western banks, is comparatively small.

Secondly, the innate conservatism of the Indian regarding the introduction of complete loose-leaf system, entailing departure from the long established custom of using bound ledgers, stands in the way of introduction of mechanized accounting. Their natural diffidence and lack of enterprise to changing a complete and reliable book-keeping system for one untried and upon which no previous experience or data exists has not yet been overcome by the Indian banks.

Thirdly, there is the doubt as to how the banking portion of the Indian public would accept a departure from the usual form in which the records of their accounts have been submitted.

Lastly, owing to the comparatively low salaries paid to the clerical staff of banks in India it may not be quite economical to introduce the new mechanized accounting.

But these hindrances will not last long in the case of India. With the development and progress of the Indian Joint Stock banks, India will also succumb to the relentless tide of progress and the western mechanized accounting which appears somewhat strange to the Indian public of to-day, will become a commonplace of the future, and the time is not far

when the pen-and-ink ledgers and the pass books will become things of the past.

Besides the Accounting and Ledger-posting machines, there are many other newly invented devices to simplify the banker's work and to ensure greater security. For instance, to protect the banker against forgery and dishonest bank clerks a device has been invented in the U. S. A. which takes photographs of all cheques as quickly as the best operator can run an adding machine. Its chief advantage is to protect the banks against dishonest customers who destroy cancelled cheques after they are returned to them by the bank, and then require the institution to refund the amounts debited for such cheques, which they allege, have never been drawn.

### III

#### Bank Publicity.

In these days of keen competition he who does not blow his own trumpet must go to the wall. Advertising has become one of the most important methods for attracting customers ; but what methods of advertising are suitable for banking institutions has given rise to much difference of opinion.

It is generally conceded that advertising in the newspapers and commercial periodicals is the best form of bank publicity. The message is carried to each reader of the newspaper individually, and the more widely circulated the newspaper selected as a medium of publicity the more customers will it bring to the advertising banker. However, there are quite a number of institutions which for one reason or another do not depend only upon the advertising columns of the newspapers. In some cases it may be due to the fact that there is no suitable newspaper circulating in the territory or among certain classes of customers served by the banks. In others the exorbitant rates quoted by the management of the newspaper companies may scare away a bank from making use of newspapers. In addition to the use of newspapers and periodicals for bank

Different forms  
of bank publicity.



advertising other forms of publicity are also essential. There is a sufficient scope for the consideration of bank advertising plans and schemes. For instance, the opening ceremony of a new bank is performed largely—if not entirely—with the object of advertising it. Speeches specifying the distinguishing features and indicating the facilities provided for its clients by the new institution are delivered and published in the press. Sometimes some *souvenirs* are also distributed on such occasions.

For the purpose of inviting new customers to open accounts at the bank printed letters are sometimes addressed to the prospective constituents individually. The specimen letters asking for the opening of Savings Bank Accounts given at the end of Appendix A will, it is hoped, be found useful. Similarly persons likely to open current accounts or give other kinds of banking business are written to individually. Pay envelopes on which there is some printed matter impressing upon their recipients that they should provide for the rainy day are sometimes supplied by banks to their customers, such as industrial concerns.

Most of the leading banks issue monthlies or quarterlies which in addition to having commercial and banking news contain articles on commercial and financial questions of the day. There are some banks which publish and distribute among customers and prospective constituents books dealing with important current problems. For instance, the Banker's Trust Company of New York published sometime back about half-a-dozen books dealing with questions pertaining to the public finance of several countries.

A number of banks issue railway time-tables, maps, calendars, diaries, catalogues or even purses, etc., for the use of their existing and prospective customers. Several banks in the United

Circular letters  
as a form of bank  
publicity.

Monthlies, quar-  
terlies and books.

Railway time-  
tables, maps,  
calendars, etc.

States of America and other countries collect reliable and useful information about the industrial and commercial conditions of the world and make available to those of their customers who have dealings with those countries. Some banks offer prizes for best specimens of corn, cotton or something produced in the locality.

The same basic principle which governs the window display of a big store governs the bank window display. The main object of both is to sell—the former selling its merchandise and the latter its service. In the case of bank window display, however, instead of using tailors' dummies dressed in clothes of the latest fashion, well-known sayings and proverbs are dramatized, *e.g.*, "Keep the wolf away from the door," is used to illustrate the moral that by opening a savings bank account with the bank the wolf of hunger can be kept far away. Here a hungry wolf in search of prey is exhibited as incapable of doing any harm to a family safe behind the walls of a snug little cottage with a smoking chimney and provisions enough to last them for the whole of winter. The much-maligned hoarding habit of the Indian people is the worst enemy of the banks in India and they have tried their level best to discourage it. A bank may exhibit in its windows on one side a man pouring Rs. 5-0-0 into a savings box with one hand and taking out with the other hand Rs. 5-4-0 from a hole at the bottom of it. On the other side in the window a man burying a box containing rupees or rupee notes under the ground may be shown. The box rusts away, the rats remove rupees to their holes and the man is left aghast. Some banks use piles of gold bricks and coins of different countries for window displays. Magnified photos of cheques with remarks as "As good as gold, but far safer," will convey the message to any casual passer-by merely at a glance. Among the ignorant and illiterate agriculturists, lantern lectures would be

very useful. Films about the atrocities of the village money-lender, the effects of his usurious rates, etc., will form excellent topics. A peasant coming home with a cart-load of ready corn meets the Sowcar who demands corn in payment of debts. The whole family looks aghast. The Sowcar goes to the court and gets a decree which leaves the peasant destitute and homeless. A somewhat wiser peasant becomes a member of a bank, gets a loan, pays by instalments, prospers, and the whole family is happy.

In view of the absence of banking habit among the people of India the need of bank publicity cannot be over-emphasised and it is therefore very desirable that banks in this country should not lag behind in this matter, not only because it is to their own advantage but also because it is beneficial to the country in general and to their customers in particular.

#### IV

##### Bank Accounting.

The importance of proper book-keeping cannot be overstressed. It is generally admitted that its importance, accuracy of accounts is not only desirable but essential for the success of a bank, or for the matter of that, any business concern. In these days when competition is keen, no business can afford to ignore the question of cost. Some persons specialize in this branch of accounting and its importance can be well understood by the fact that elaborate systems of cost accounting are being used in different kinds of manufacturing and other concerns and that there are at present associations like the Institute of Costs and Works Accountants, London, and the National Association of Cost Accountants, New York. It may be said that a banker neither buys nor sells goods or commodities, he need not, therefore, worry himself with cost accounting. While it is true that a banker does not buy or sell goods, he does, however, render certain services to his constituents the cost of

which he should find out in order to see whether or not a certain customer's account is a paying one. Moreover, the accounts must be kept not only for the purpose of finding the cost of an article or certain services but also for finding the exact amounts owing to and by industrial and commercial concerns. This aspect is of particular importance as far as banks and bankers are concerned, because not only the failure to keep proper accounts by a banker may affect his credit but it may land him in difficulties. For instance, if a banker's clerk who receives a certain sum of money for the credit of A's account by mistake passes the entry into B's account, the banker may on the one hand be unable to recover the excess amount drawn and spent by B if B can prove that the wrong entry in the pass book has misled him and altered his position; while on the other, the banker may have to pay damages to A if his cheque is dishonoured on account of his balance being reduced through the above mistake. It may also be stated that sometimes even businessmen depend upon their bank records in the matter of their financial dealings. As, the Courts of law accord weight to certified copies of bank accounts and the law exempts the bankers from producing their account books in court it is necessary that their accounts must be accurate. No banker can afford to be careless in the matter of accounting and therefore this department is always placed under a competent senior officer of a bank.

Objects of keeping proper accounts by banks.

The chief objects with which bank accounts are kept are the following :—

(a) To have a chronological account of all transactions done by a bank, as a bank must be able to produce sufficient proof of what it does from day to day. These running accounts are very important.

(b) To know the exact amounts owing to and by a bank. Unless a banker knows what are the exact amounts due from various customers he cannot possibly make demands upon

them. Similarly unless a banker knows what are the amounts owing by him to his customers he cannot honour their cheques and make other payments required by them.

(c) To know its exact position at all times and thus to be able to find whether or not the business is making progress.

The general principles of book-keeping govern the bank accounting as they do in the case of other kinds of business. The rules which govern bank accounting are the same for all banks and, therefore, the general books of records are more or less similar. However, the manner of recording and the modes of procedure are essentially matters of detail.

It is not possible to give a set of bank books that could be used by all kinds of banks as their requirements differ. Moreover, it is not so very important how the result is achieved so long as the accuracy of records and completeness of control can be obtained. No doubt, attempts are sometimes made to simplify and standardise the system of bank book-keeping and, generally, in this respect, the lead of a well-managed bank is followed by other banks.

Banks keep records of three kinds:—

(a) Corporate records; (b) financial records and (c) statistical records.

Corporate records are those records which relate to the corporate life of the bank. These usually consist of (i) share-ledger; (ii) share-certificate book; (iii) share transfer book; (iv) dividend book and (v) minute book. In the share-ledger are the accounts of the various shareholders, showing the several numbers of shares allotted to them, their nominal value, the amount paid on them and the entries of several shares transferred from one account to another. The share-certificate books, generally have the counterfoils of the certificates issued to the different shareholders. In the share-transfer register the transfers of shares

are registered and in the dividend books the rates of dividends paid are entered. The minute book contains the minutes of the meetings of the Board of Directors of the bank.

The financial records of a bank are the most important ones. They have very much to do with the daily work of the bank. The following are the important books used for the purpose\* :—

- (a) Cash Book.
- (b) Day Book.
- (c) Journal.
- (d) General Ledger.
- (e) Depositors' Ledgers which may be divided as follows :—
  - (i) Current Deposits Ledger.
  - (ii) Fixed Deposits Ledger.
  - (iii) Savings Deposits Ledger.
- (f) Loan Ledger.
- (g) Agencies Ledger.
- (h) Securities Ledger.
- (i) Bills Receivable Book.
- (j) Bills Payable Book.
- (k) Register of Securities belonging to the Clients.

As regards the statistical records, it should be remembered that every large trading concern in modern times collects certain kinds of statistics in order to obtain accurate information about its progress from time to time. For instance, it is the statistics collected by a bank that enable the banker to see whether the bank is progressing or retrogressing and find out reasons for the same. Certain kinds of banking statistics have a great educative value.

Much information is gathered by means of statistics which are summarized for the use of those who control the business. In order to watch their advantages.

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\* For a complete list of principal books of accounts used in a bank in England please see Appendix C 1.

carefully the work of a bank it is necessary to classify loans, deposits, income and expenditure. With the help of statistics the general manager of a banking corporation will be led to find out the causes for increase or decrease in the profits of the bank. It may, perhaps, be desirable to collect statistics pertaining to the following facts and summarize them :—

(1) New accounts opened and the amount of initial deposits.

(2) Accounts closed.

(3) Deposits received and the amount paid out each month, in the various departments.

(4) Number of cheques paid.

(5) Number of cheques, bills, and other items collected in each month.

In spite of the great importance of the banking statistics it is regrettable to note that the statistical tables relating to Joint Stock banks in India are always stale by at least two years. For example, the tables published in 1931 (the latest available) are those for the year 1929. The cause for this delay is hardly intelligible as similar statistics of other countries are published soon after the end of the year. These statistics are not quite up to the mark either, and in fact they are far from being adequate and up-to-date. It is not known why the statistics relating to the number of cheques cleared in different clearing houses are not published even if they are collected.

It is certain that the work of collection and compilation of banking statistics will be done far more efficiently and promptly if the department proposed in the booklet "Regulation of banks in India"\* is brought into existence as it will have free, easy and legal access to various kinds of available banking records. To facilitate the work and to insure its accuracy, the Director-General of Banks, under the scheme suggested in the booklet referred to above, may supply printed forms to banks and require them to fill up and return them to him within a prescribed period.

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\* Regulation of Banks in India, by M. L. Tannan, p. 21.

## CHAPTER IV.

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### BANKERS AS BORROWERS.

As already explained the relationship between a banker and his customer is that of creditor and debtor, the relative position being ascertained from the state of the account of the customer. Hence, two of the chief functions of a banker are the borrowing and lending of money. We propose to take up the former first.

It may safely be said that in modern times there is hardly any business on a large scale which is carried on entirely with the funds of its proprietors, but in the case of banking business the borrowing of money is essential for the simple reason that if a banker is to earn more than the mere interest on his own capital, he must borrow funds at low rates and lend them at high rates. Of course, banks earn a part of their profits from exchange, commissions, etc., but in the case of almost all the leading commercial banks the profits from these sources are generally a small fraction of their total profits. The major part of their profits is earned by the employment of the funds deposited with them. It is, therefore, found generally that the smaller the percentage of paid-up capital to the deposits of a bank the higher is the rate of dividend declared as will be seen from the statements given on the following two pages.

Banker as  
Borrower.



**Statement showing the relation between the paid-up capital, deposits and profits of  
some of the important English Joint-Stock Banks for the year ending**

**31st December, 1930.**

1	2	3	4	5	6	7	8	9	10
	Names of Banks.	Paid-up capital.	Reserve fund.	Total of columns 3 and 4.	Deposits.	Percentage of col. 5 to col. 6.	Profits.	Percentage of profits earned on the paid-up capital.	Dividends.
1.	Barclays Bank Ltd.	£ 15,858,217	£ 10,250,000	£ 26,108,217	£ 349,273,283	7.5	£ 1,821,207	11.4	A 10%
2.	Lloyds Bank Ltd.	15,810,252	10,000,000	25,810,252	364,649,397	7.1	2,129,516	13.4	15%
3.	Midland Bank Ltd.	14,248,012	14,248,012	28,496,024	399,605,549	7.1	2,318,618	16.2	18%
4.	National Provincial Bank Ltd.	9,479,416	9,479,416	18,958,832	292,379,793	6.5	1,930,854	20.3	18%
5.	Westminster Bank Ltd.	9,320,157	9,320,157	18,640,314	201,579,675	6.3	1,821,888	19.5	20%

## II

Statement showing the relation between the paid-up capital, deposits and profits of  
Leading Joint-Stock Banks in India for the year 1930.

1	2	3	4	5	6	7	8	9	10
	Names of Banks.	Paid-up capital.	Reserve fund.	Total of columns 3 and 4.	Deposits.	Percentage of col. 5 to deposits.	Profits.	Percentage of profits earned on the paid-up capital.	Dividends
		Rs.	Rs.	Rs.	Rs.		Rs.		
1.	The Imperial Bank of India.	5,62,50,000	5,53,00,000	11,15,50,000	83,96,97,512	13'1	1,01,73,849	18 8	16%
2.	The Bank of India Ltd.	1,00,00,000	1,05,04,000	2,05,04,000	12,90,20,000	15'8	14,13,064	14'3	10%
3.	The Central Bank of India Ltd.	1,68,13,200	97,26,000	2,65,39,200	14,81,16,864	17'9	13,38,317	7'9	6%
4.	The Allahabad Bank Ltd.	35,50,000	51,03,000	86,53,000	11,02,80,000	7'8	6,00,930	17'0	18%
5.	The Bank of Baroda Ltd.	30,00,000	26,81,000	56,81,000	5,95,66,000	9'5	3,32,342	10'3	10%
6.	The Bank of Mysore Ltd.	20,00,000	15,75,000	35,75,000	2,30,81,356	15'4	4,44,817	22'2	14%*

\* Includes bonus.

**Forms of Borrowing.** Bankers borrow money by issuing bank notes, receiving deposits, drawing bills and issuing letters of credit—authorizing their agent or correspondent in another place to honour the drafts of a person named up to a certain amount and to charge the sum so paid against the grantor of the credit. If the issue of bank-notes is left out, a banker's liability to his creditors can take the form of deposits, acceptances, and bills payable. Receiving deposits is no doubt one of the main functions of modern banks and in India it is certainly the most important, if not the only way in which banks borrow money.

**Issue of bank notes.** The issue of notes by a bank was considered to be the most important function of banks in England until the beginning of the second quarter of the last century. Till 1825, no Joint Stock bank, other than the Bank of England, was allowed to issue notes in the country and consequently it was believed that the bank had the monopoly of joint stock banking and thus no other Joint Stock bank was started till 1825 when the monopoly of note issue given to the bank was restricted to a radius of 65 miles from London. However, during the thirties of the last century this view began to be discountenanced and banks of deposit were started in London. The success of these institutions proved beyond doubt that banks could succeed even without the right of note-issue. The Bank Act of 1844 not only put a stop to the establishment of new banks with the right to issue notes but also laid restrictions upon the powers of the then note issuing banks other than the Bank of England, and limited the note-issue of each of them to their average circulation during 12 weeks before 27th April, 1844. This did not prevent the starting of new banks as it was found that there was a vast field for banking business other than that of issuing notes. Even the banks having the right to issue notes either relinquished the same or lost it on account

of their amalgamation with other banks with London offices which could not issue notes. Some of the country note issuing banks surrendered the right on the opening of offices within the radius of 65 miles from London. However, it was largely on account of the growth of the importance of other kinds of banking business that out of the 279 banks other than the Bank of England which were allowed to issue bank notes not one has continued to do so.

In the United States of America this function of the National banks has been falling into the background. Although the bank notes are still used to a large extent, in several European countries efforts are being made to replace them by cheque currency.

In India before the introduction of the Government currency notes in 1862 the three Presidency Banks had the right to issue notes, but their notes not being popular did not circulate to any appreciable extent. For many years even after the Government of India took over the issue of notes the use of paper money did not become popular largely owing to the want of public confidence in this form of currency. With the spread of education and expansion of trade currency notes have begun to play an important part in the currency system of this country. According to the present arrangement there is a strange anomaly in India—the credit and currency are not in the hands of a central bank as is the case in most of the other leading countries. The former is controlled by the Imperial Bank of India whereas the latter is in the hands of the Government. Although at the time of the amalgamation of the three Presidency Banks in 1920 into the present Imperial Bank of India it was hoped that the power of note-issue would be given to the new institution, it is regrettable to note that so far nothing of the kind has been done. However, it is very likely that in the near future a central reserve bank which can regulate the issue of notes according to

the requirements of trade as well as control the credit will be created.

In certain western countries, Germany, for instance, some banks borrow large sums of money by the issue of bonds payable after a certain number of years, but, this method is unknown in England and has not been adopted to any large extent by banks in the United States of America.

### **Bank Deposits.**

In India deposits take three different forms—Fixed Deposits, Savings Bank Deposits and Current Deposits.

### **Fixed Deposits.**

The term 'fixed deposits' means deposits repayable after the expiry of a certain period which ordinarily varies from three months to five years. Fixed deposits are also received for shorter periods than three months, but generally, not less than for a month. In England the term 'Fixed deposit' is not generally used, as the banks receive deposits repayable subject to seven or fourteen days' notice. In the case of fixed deposits the period is usually fixed at the time the deposit is made. The fixing of the period enables the banker to invest the money, or, otherwise to employ it in his business without having to keep a reserve, and this is one of the reasons why 'fixed deposits' are so popular with bankers in India.

Almost all banks in India borrow large sums of funds by means of 'fixed deposits' but as all of them do not give in their balance-sheets figures of different kinds of deposits separately, it is not possible to state with certainty the proportion between 'current deposits' and deposits payable after the expiry of a 'certain period.' An examination of the balance-sheets of those banks which give figures of their deposits separately appears to show that the ratio varies from 1 to 2·5 to

Issue of bonds by  
banks.

Definition.

Ratio between  
current and fixed  
deposits.

1 to 4. This great variation in the ratios may be due to several factors. In the first place, a large majority of a bank's customers may happen to consist of persons who, for one reason or another, do not make use of the cheque currency, whereas, a large number of the customers of another bank may be using cheques to a large extent. In the second place, some banks, as is the case with District Co-operative banks, invest their funds in such securities as cannot be easily realized; and, therefore, they do not welcome current deposits. At the end of 1931 in the U. S. A. out of total deposits of commercial banks amounting to about \$m. 43,000 deposits payable otherwise than on demand accounted for nearly \$m. 19,000. A year earlier in Japan the banks had Ym. 5,091 in time deposits as against Ym. 3,242 in the form of demand deposits.

From the customers' point of view these 'fixed deposits' mean a sort of investment. They deposit their money with the banks very often because, they are likely to require it after a certain period. The former reason is mainly responsible for the large amount of these deposits with the Indian banks, as the great majority of the investing public in this country prefer this form of investment to industrial securities of which they know next to nothing.

Except in the case of 'winter season deposits' which the banks accept during the season when the money-market is tight, the longer the period during which the money is to remain with the banker, the higher is the rate of interest offered by him. It generally varies from three to six per cent. It depends not only upon the length of the period and the amount deposited, but also, upon the credit of the bank and the state of the money-market.

In England, the Bank Rate by which is meant the official discount rate of the Bank of England and not the loan rate, the sense in which the term is used in India, governs the deposit rates. Till 1921 the English banks used to receive such deposits at one and half per cent. below the Bank Rate with certain maximum and minimum rates, but in that year owing to the increase in the expenses of management they reduced the deposit rates by raising the difference between the Bank Rate and their deposit rates to two per cent. This is generally the case with London banks, but country banks still receive deposits at one and a half per cent. below the Bank Rate. This difference in practice between the English banks and the banks in India is largely due to the fact that the former invest their funds largely in the discounting of bills upon which the discount rate charged varies with the bank rate and is usually about a half per cent. below the latter. This form of employment of funds by the banks in England enables them to repay their deposits after a short notice, which, in actual practice, is generally dispensed with, provided the customer has no objection to his account being debited with interest for seven to fourteen days, the period of the notice required to be given. In India, on the other hand, the banks invest the major part of their funds in loans carrying interest at one to two per cent. above the bank-rate; and these loans in practice are usually for comparatively long periods. Consequently it is necessary for banks in India to require a longer notice than is the case in England.

The legal position of the banker in connection with fixed deposits is one of a debtor who is not bound to repay the amount before its due date. Some banks reserve to themselves the right to repay deposits before their maturity by giving due notice. This condition, amongst others, would be printed on the back of the deposit

receipt and the terms of the contract between the banker and the customer will be governed by such conditions. Unless, however, there is a stipulation to the effect that the banker is entitled to return the deposit at an earlier date, he cannot do so before the due date without the consent of the customer. The banker continues to be a debtor even though the period fixed for the deposit has expired and the deposit is not withdrawn in spite of the fact that the banker does not allow interest after the date when the debt is due. He does not become a trustee for the customer of the funds deposited with him: *Pearce v. Creswick* ;\* and *Official Assignee of Madras v. Smith*.†

In order to oblige their customers bankers occasionally allow them to withdraw their fixed deposits before their due dates. In such cases either the customer foregoes the interest accrued on the deposit or he borrows the amount required against the security of his fixed deposit at a rate of interest which is generally 1 to 2 per cent. higher than the rate allowed on the deposit. In the latter case the banker's advance is fully secured as there can hardly be any security better than the amount due from the banker to the customer. It is sometimes said that the banker adds to his reputation by giving his customers such facilities. It, nevertheless, appears to be a practice which ought to be discouraged. By permitting the withdrawal of fixed deposits before their maturity, the banker impairs his own cash resources and thereby runs certain risks in cases of the tightness of the money-market. If the funds kept in hand for meeting the demands of his customers having current deposits and others requiring accommodation are used in repaying fixed deposits before maturity the banker may find himself in difficulties. Again, if on the occasion of a financial crisis a banker permits the withdrawal of some fixed deposits

Payment of fixed deposits before due dates.

\* (1843) 2 Hare, 286.

† (1908) I.L.R. 32 Mad. 68.



before the due dates and then stops doing so as was done by a certain well known bank in the Punjab at the time of the banking crisis in 1913, he is bound to suffer in reputation. At such times indeed it will be the duty of a banker to keep his funds as liquid as possible and to keep more cash readily available than is necessary in normal times, and he should, therefore, not deplete his cash resources by paying such deposits before their maturity so as to save some interest.

When depositing his money, the customer receives a deposit receipt which is usually marked 'not negotiable.' It can, of course, be transferred to a third party, but a deposit receipt, not being a 'negotiable instrument' the transferee does not get a better title than that of the transferor and, therefore, such receipts are not to be treated like cheques. A 'deposit receipt' even if, in terms, it is expressed to be transferable, has never been recognized as a 'negotiable instrument,' or, as giving the transferee the right to sue in his own name.\* In a recent case *Abdul Rehman Haji Osman v. Central Bank of India and others*†, Mr. K. M. Jhaveri, Chief Judge in the Small Causes Court, Bombay observed while delivering judgment against the bank that the Fixed Deposit Receipt with "not transferable" printed on the top of it was not a negotiable instrument and that it could not be transferred by mere indorsement in blank. In this case, the receipt was endorsed and delivered to the second defendant as security for the faithful performance of his duties by the plaintiff, and it was not intended that the ownership should be transferred. It is, however, possible that a bank, having issued the document in a transferable form might be stopped from disputing its character as such. In England, a form of cheque is sometimes printed on the back of a 'deposit receipt.' In such a case, if the conditions of the

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\* *In re. Dillon, Duffin v. Duffin*, (1890) 15 Ch. D. 651.

† *The Journal of the Indian Institute of Bankers*, January 1930, p. 54.

deposit such as previous notice, etc., have been fulfilled, the bank cannot, as between itself and the depositor, refuse to pay the holder : *In re. Mead*.<sup>\*</sup> Payment to a person wrongfully dealing with even a signed deposit receipt is no discharge to the bank unless the depositor is stopped by his conduct from disputing such payment : *Evans v. National Provincial Bank of England*,<sup>†</sup> and the banker should, therefore, act prudently if, before so paying a deposit he were to obtain a 'letter of authority' from the customer.

It is doubtful whether valid cheques can be drawn against a deposit account at all if that is the only account of the customer with the bank. Bankers in England usually honour such cheques relying upon lien or set-off, either of which applies to a deposit account. It appears, however, that even after expiry of the fixed period, the depositor is not entitled to draw cheques against fixed deposit unless he has either made such arrangements with the banker, or, has given instructions to him to transfer the amount to his current account.

Whether the return of the deposit receipt to the banker is a condition precedent to the repayment of the loan depends to a great extent upon the conditions of the deposit receipt. If the return of the deposit receipt is made a condition for repayment, no cause of action would then arise until its return : *Atkinson v. Bradford, Third Equitable Benefit Building Society*<sup>‡</sup> ; *In re. Tidd, Tidd v. Overell*.<sup>§</sup> In case of the loss of the receipt, however, a court would exercise its equitable jurisdiction and would not allow the depositor's failure to produce the receipt to stand in the way of the depositor reclaiming

<sup>\*</sup> (1890) 15 Ch. D. 651.

<sup>†</sup> (1904) 13 T.L.R. 429.

<sup>‡</sup> (1890) 25 Q.B.D. 377.

<sup>§</sup> (1893) 3 Ch. 154.

his money. Nor would the court require the depositor to give an indemnity bond, as a 'deposit receipt' is not a 'negotiable instrument' and its transfer cannot confer any better title on the transferee than that of the transferor.

The Law of Limitation does not apply to a 'fixed deposit' as long as interest is being paid on it, or, as long as the deposit receipt is being renewed. If the deposit receipt has not been renewed, however, the period begins to run from the date on which the depositor was entitled to be repaid

Whether a particular deposit account is attached by a garnishee order *nisi* depends on the terms on which it is held at the time of service of the order. To be affected by the order, it must be a debt, 'due, or, accruing due,' that is, 'due' or, accruing due at a definite and certain approaching date: *Webb v. Stenton*.<sup>\*</sup> A deposit account repayable only on production of the receipt and a deposit account repayable on fixed notice which has not been given are not attachable.

The following, however, are attachable:—

- (a) a deposit account repayable on demand ;
- (b) a deposit account repayable on fixed notice which has been given ;
- (c) a deposit account repayable at a fixed future date, or, after the lapse of a specified time.

When the account is attached, the whole amount is impounded irrespective of the relative amounts of the judgment-debt and the balance: *Rogers v. Whitelay*.<sup>†</sup>

A deposit receipt may be the subject of a *donatio mortis causa*: *In re. Dillon, Duffin v. Duffin*,<sup>‡</sup> and the court will compel

<sup>\*</sup> (1883) 11 Q.B.D. 518.

<sup>†</sup> (1892) A.C. 118.

<sup>‡</sup> (1890) 44 Ch. D. 76.

the legal representatives of the deceased to facilitate the receipt of the money by the donee.

Banker's deposit receipt is exempt from stamp duty, provided the deposit is not expressed to be received of, or, by the hands of, any person other than the one to whom the same is to be accounted for.\* The exemption holds good though a time be fixed for repayment. Nor does provision for the payment of interest affect the question.

Deposits are frequently received by bankers in the joint names of two or more persons, and the conditions subject to which such deposits are accepted, will, of course, regulate the manner of withdrawal. Thus, the money may be withdrawn by either of the depositors, and in such a case, the banker will act upon the instructions and signature of either of the depositors. On the other hand, if an account is opened in the names of two depositors, and if there is no provision to the contrary, the instructions of both will be necessary.

### **Savings Bank Deposits.**

Another kind of deposits received by banks are the Savings Bank deposits which are not so important to bankers as fixed or current deposits.

Savings bank deposits take their origin in the Trustee Savings Banks which are institutions in the nature of banks established for the receipt of moneys from depositors without any benefit accruing to the trustees or organisers.† Depositors of the Trustee Savings Bank in England can use only one bank at a time and may not have more than one account at one and the same time. Any breach of this rule involves forfeiture

\* See the Indian Stamp Act, 1899, Schedule 1, Item 53.

† Trustee Savings Bank Act, 1863 (26 & 27), Vic. c. 87, Sec. 2.

of any amount illegally deposited, or of so much thereof as the National Debt Commissioners may think fit. Exception is made in the case of ordinary deposits by 'Friendly Societies.' Not more than £ 50 can be deposited by any depositor with any Trustee Savings Bank in one year, whether any sum has been previously withdrawn or not; nor can any deposit be received which would bring the aggregate amount to over £ 200. Deposits may be received from, and repaid to, infants and married women.

The object of these Trustee Savings Banks is to encourage thrift among people of small means by accepting small deposits which at one time were not looked upon favourably by banks.

Similar objects are served by Post Office Savings Banks which were first established in England by the Post Office Savings Bank Act, 1861 (24 & 25 Vict. c. 18) and the facilities of the Post Office Savings Banks are now available in all English towns as well as villages where the Post-office transacts savings bank business.

In India Trustee Savings Banks were first established in the Presidency towns between 1833 and 1835 and their management was transferred to the Presidency Banks in 1863—64. In 1870 District Savings Banks were opened in certain selected treasuries and 12 years later Post Office Savings Banks came into existence in all principal Post Offices in the whole of India except the Bombay Presidency. This exception and certain other restrictions in other parts of India were the result of special arrangements made with the Presidency Banks to whom the management of the old Government Savings Banks was entrusted. However, these restrictions were removed after a year. The Post Office Savings Banks continued side by side with the District Savings Banks for

about 3 years, after the expiry of which period the latter were abolished but the Government Savings Banks in the three Presidency Banks continued till 1896.

The popularity of the Postal Savings Banks in India can be judged from the following statement showing the growth in number of depositors and the total deposits :—

—	1885—86	1895—96	1914—15	1923—24	1929—30
Depositors ...	1,55,009	6,53,872	16,44,074	20,89,314	24,77,613
Amount of deposits (in lakhs of rupees) ...	2.26	9.04	14.89	24.78	37.13

The banks found that it was a paying business to take in such deposits, however small they may be. Their advantages to a bank are that a very small reserve is sufficient to meet demands on such deposits as, generally, a depositor is not allowed to withdraw more than Rs. 100 in any one week. Larger sums may be drawn after giving two weeks' notice, but not more than Rs. 500 in one month. Moreover, such accounts are not generally allowed to be operated upon by means of cheques, so that the banker does not run any risk in connection with paying out cheques. Interest is generally allowed on minimum monthly balances, and not on daily balances. Some banks including the Post Office Saving Banks allow interest on deposits received up to the 4th of the month so as to enable those receiving small salaries to deposit their money and earn interest thereon. Banks incur little expense on such accounts so far as stationery is concerned, but very often, they give their customers such privileges as the collection of cheques and safe custody of valuables or securities.

#### Current Deposits.

Although these deposits do not contribute to the bankers' working capital as large amounts as fixed deposits do, yet,

they throw a much greater responsibility on them, because, it is in connection with such deposits that the bankers' duty to honour their customers' cheques arises.

By taking such deposits the banker undertakes to honour his customer's cheques as long as his Banker's obligation. account is in credit. The banker may have to suffer loss if he pays a forged cheque, or, if he pays a cheque contrary to the instructions of his customer as would be the case if the banker paid a generally crossed cheque to a non-banker or a specially crossed cheque to a banker other than the one in whose favour it is crossed or to his agent for collection.\* The customer has to pay for the stamps on the cheques if they are liable to a stamp duty but the cheque forms themselves, as well as the pass-book, are supplied free of charge by the banker. The banker has to keep sufficient funds in hand to enable him to meet the demands of his customers.

In India, most banks allow two per cent. interest on minimum daily or monthly balances of Interest. Rs. 300—1000 provided the interest accrued in a half year is not less than Rs. 3 to 5. Amounts exceeding Rs. 1 lakh are generally subject to a special arrangement. Sometimes customers are required to maintain a minimum balance failing which they have to pay bank charges in the form of commission on the annual turnover of the account. This practice enables the banker to use freely the minimum balance fixed on the account without running any great risk. Thus, if a banker has 100 such accounts and the minimum balance for each account is Rs. 500, he can freely employ Rs. 50,000. Of course, his experience will teach him what proportion of current deposits in excess of the minimum balances he can safely invest. In the case of fixed deposits he knows exactly what maximum amount he can be called upon to pay whereas, in the case of current deposits he can only approximately estimate the

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\* Negotiable Instruments Act, 1881, Sec. 129.

demands that are likely to be made upon him, and therefore, he has to keep larger funds to meet emergencies.

In London, only a few banks allow interest on current deposits. The practice generally followed there is not to allow any interest on current accounts except when they are subject to any special arrangement between the banker and the customer, whereby interest may be allowed if the account is a substantial one. On the other hand, if the monthly balance goes below a certain amount, the banker would charge a commission which may be a fixed amount per annum, or, about one-eighth to one-quarter per cent on the turnover.

Before opening a new account, a banker should take certain precautions and must ascertain by inquiring from the person wishing to open the account, if such person is unknown to him, as to his profession or trade as well as the nature of the account he proposes to open. As by taking up the references given by the new customer the banker can easily verify such information and judge whether or not the person wishing to open an account is a desirable customer, it is necessary for the bank to inquire from responsible parties given as references by the customer as to his integrity and respectability, an omission to do which may result in serious consequences not only for the banker concerned, but also for other bankers and the general public. From time to time, instances of fraud committed by persons in possession of cheque books have come to our notice. For instance, some years ago, a well-dressed person approached the manager of a bank in Delhi with a request to open an account in his name and, feigning to have forgotten to bring his purse containing currency notes, persuaded him to part with a cheque-book containing 16 stamped cheques for which he paid one rupee—the amount of stamp duty—and promised to send deposit on the following day. Having obtained possession of the cheque-book he succeeded in persuading certain merchants to

Letters of introduction or reference.



accept his cheques in payment of his purchases. The cheques were subsequently found to be worthless as the man had no account with the bank upon which they were drawn. In fact on the failure to make the inquiry referred to above the banker might enable a deceitful person to obtain for fraudulent purposes the possession of a cheque-book and if he is an undischarged bankrupt, the banker might be placed in a difficult position by allowing such person to operate on his account with the bank.

Secondly, although the banker may, at the time of the opening of an account, have no idea to grant an overdraft to the new customer, an overdraft may be granted inadvertently and in such a case, the importance of getting a letter of introduction or references from the new customer can be well understood. For instance, if a bank clerk, by misreading the balance at the credit of the new customer's account honour his cheque, it will amount to the grant of an overdraft which can be realised only if the customer is a respectable party. Similarly, a credit item belonging to a particular customer may be placed to the credit of the account of another customer who may draw the amount and decamp.

Thirdly, the banker has to answer inquiries from fellow bankers about his customer's financial position and it is therefore desirable both in the interest of the banker as well as his customer that the former is in possession of such information.

Fourthly, if the banker fails to make the ordinary enquiries about the new customer the former may be deprived of the statutory protection given to a collecting banker under Sec. 131 of the Negotiable Instruments Act. In *Ladbroke v. Todd*\* Justice Bailhache said, 'the bank acted negligently, for, they did not make ordinary inquiries which ordinary, reasonable people, according to the evidence before me, should make

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\* Times (London), March 28, 1914.

in opening an account.' It is not quite certain whether any evidence as to the general practice of bankers in India making such inquiries at the time of opening new current accounts referred to in the judgment will be forthcoming in India.

Each customer is required to supply his banker with one or more specimens of his signature and these are entered in a signature book.

However, the modern practice is to have the specimen signatures on cards which are indexed and filed in alphabetical order. Each customer's full name should be written in bold characters above his account in the ledger and his address and occupation should also be added.

In case a customer desires that his account be operated upon by another person a mandate\* in writing to that effect, as well as the specimen signature of the person in whose favour the mandate is given should be obtained by the banker. Power to draw and endorse cheques does not include power to accept bills or overdraw the account; it is, therefore, necessary that the customer's instructions to his banker should specifically state so, if he wishes the banker to allow the person to overdraw the account. The banker should have notes of such instructions of his customers entered on the ledger accounts of those customers.

In the absence of a notice, expressed or implied, the banker is not concerned with the question of the customer's title to money paid in by him. Money may be paid into a customer's current account by a third person, and in ordinary cases, the banker is bound to accept.

### **Special Types of Customers.**

Any individual is legally capable of opening an account with a banker if the latter is satisfied as to that person's

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\* Form 2, Appendix A.

*bona fides* and if he is willing to enter into the necessary business relations. The power of certain classes of persons, however, to make valid agreements is subject to well recognized restrictions, as is the case with minors, lunatics, drunkards, married women, undischarged bankrupts, agents of all kinds, trustees, executors, administrators, etc. We shall therefore consider the position of a banker with regard to these special classes of customers and the precautions which he should take in his dealings with them.

1. According to the Indian Law\* until a person completes his eighteenth year he is regarded as a minor, unless before the completion of his eighteenth year a guardian of his person or property is appointed by a Court in which case the minority extends to the age of twenty-one. Under the English Law a person continues to be a minor until he, or she, completes his or her twenty-first year. This law applies also to the descendants of persons of a British domicile unless they have taken a new domicile.

As a general rule a minor can repudiate all his contracts at his option. A bill or cheque given by an infant to repay money borrowed by him during his infancy is entirely void. He cannot even be compelled to repay money which he has borrowed even though he has obtained the loan by falsely representing himself to be of full age.

A current account may be opened in the name of a minor and the banker runs no risk in dealing with him as long as his account is in credit. In view of the fact that a contract with a minor is void and consequently he cannot be compelled to repay even amounts advanced to him for the purchase of necessities of life, it is

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\* Indian Majority Act, 1875, Sec. 3.

advisable to open the account in the name of his guardian. This will enable the banker to recover the amount of overdraft which he may have granted even by mistake. Otherwise, not only the money advanced to a minor is irrecoverable but any securities pledged by him must be returned. Similarly, an adult who gives a bill in respect of a debt contracted during minority cannot be sued for the same, except by the holder in due course, who was ignorant of the circumstances under which the bill was given. Although with no capacity to contract and render himself liable on a bill or cheque, a minor can draw, or endorse any cheque or bill and the instruments so drawn or endorsed by him are nevertheless valid.

A minor person may not be legally capable of entering into a contract in his own name, but there can be no objection to his acting as an agent for another person competent to contract, provided the former is duly authorized by the latter. For instance a minor son may make contracts besides endorsing cheques and bills on behalf of his father if the latter has duly authorized the former to do so. Moreover, if he has distinct authority, he may purchase goods and obtain advances in the name of his principal although it would be clearly to the advantage of the other parties to such contracts to obtain written confirmation of such authority before completing the necessary arrangements.

There is nothing to prevent a minor from becoming a partner in a firm, and transacting business on its behalf. However, he cannot be held liable for any debts of the partnership incurred before he attains majority. On the other hand, unless he expressly repudiates the contract of partnership on his attainment to full age, he will be regarded as having ratified the agreement and will become liable as a general partner for any debt incurred thereafter by the partnership.

2. Under Sec. 11 of the Indian Contract Act, 1872, persons of unsound mind, as in the case of lunatics, minors, are disqualified from contracting, but the disqualification does not apply to contracts entered into by lunatics during the period of sanity or ratified during such periods. Contracts with persons of unsound mind are not void but voidable in law. Thus, it will be clear that such contracts have no inherent defect but can be avoided provided the other party is aware of the fact of lunacy of the first party. Consequently, no banker would knowingly open an account for a person of unsound mind because that would easily involve him "in the difficulty of choosing between the risk of unjustifiably dishonouring the customer's cheques on the one hand, and of being held to have debited his account without adequate authority on the other."\* However, a banker who discounts a bill duly drawn, accepted, or indorsed by a lunatic, can realise the money due thereon from him unless it can be proved that the banker knew of the fact of the lunacy of the party at the time of discounting. However, when a banker comes to know of his customer's lunacy all operations on his account should be suspended until the receipt of an order from the Court or the definite proof of the customer's recovery.

3. The law recognises contracts only when the parties are in sound mind and in full possession of their faculties at the time of their making. If a person who is party to a contract can prove that at the time of entering into the contract he was incapable, from the effects of liquor, of realising what he was doing and that the other party was aware of this fact, he may have the contract set aside by the Court. However, if the other party were unaware of the incapacity at the time of the agreement, then the

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\* Hart's Law of Banking, Third Edition, p. 145.

contract will be binding. Generally drunkenness is not considered to affect a person's power to contract, yet with a view to prevent people from taking any undue advantage of a drunken person, he is allowed to evade liability on instruments so far as the person who improperly induced him to sign them is concerned, provided the Court is satisfied that the person was so drunk as to be unable to know what he was doing. In case, however, the instrument has passed into the hands of a holder who takes it in good faith and for value the instrument will remain a valid one. If a customer tenders, when drunk, a cheque for which he demands payment the banker should better have a witness to the signature and the payment of the amount. However, a contract made during a period of mental incapacity may be ratified when the person concerned becomes normal.

4. A current account may also be opened in the name of a married woman. Opening an account constitutes a binding contract with the married woman. She has power to draw cheques and give a sufficient discharge, and *bona fide* dealing with the account cannot subsequently be questioned to the prejudice of the banker. In the case of an overdraft the banker will have no remedy against her if she has no separate estate—and even if she has separate property or *Stri-dhan* as it is known among the Hindus—the property may be settled upon her in such a way that she can only use the income as it falls due and can neither touch the capital nor anticipate income. She cannot make her husband responsible for debts incurred by her except in cases where she acts as his agent, or where she borrows for necessities for herself and the household. The husband, however, can escape liability, if he can prove that his wife is already well supplied or that he has forbidden her to borrow in his name. Again the banker should also keep in view the fact that in the case of overdraft he will have no personal remedy against a married woman, as she cannot

be committed to prison for non-payment of a judgment-debt. According to the French Law it appears that a French married woman cannot open a bank account without her husband's permission.\* Looking to the difficulties with which making of contracts with a married woman is beset, a banker will be well advised not to entertain any married woman's application for an overdraft without very careful precautions to safeguard against loss.

5. Current accounts may be opened with corporations, whether trading or non-trading, and apart from special authority to open accounts with banks they have inherent powers to draw valid cheques. However, before opening an account in the name of a corporation a banker should examine the company's special Charter, Act, or Certificate of Incorporation granted by the Registrar of Joint-stock companies, and its Memorandum and Articles of Association. This will enable him to see whether or not, the company has a legal entity, and if it has, what are the general provisions regarding its objects, capital, borrowing powers, etc., because persons dealing with trading corporations are expected to know such provisions. The banker should also ask for a copy of the resolution passed by the directors of the corporation appointing him as banker to the corporations and naming the person, or persons authorized to operate on the account. Such a copy should be signed by the chairman of the meeting and countersigned by the secretary of the company. The banker should obtain the specimen signatures of the persons authorized to operate on the account of the company. It is also desirable to ask for copies of the balance sheets and annual reports of the company, for a few preceding years, if the company is not a new one. These will help the banker to form an opinion about its financial position, etc.

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\* Impressions of French Banking. The Journal of the Institute of Bankers, November, 1929.

**Borrowing** powers with or without restrictions are generally specified in the Memorandum and Articles of Association. Such powers may or may not include powers to pledge the company's property. Except in the case of non-trading companies both under the English and the Indian Law companies have implied powers to borrow and mortgage property to such an extent as may be reasonable and necessary for the carrying out of the objects stated in the object clause. It is not necessary for a banker to make enquiries as to the purpose for which the funds to be borrowed are required, and the advance made cannot be avoided on the ground of the funds being misapplied as long as the banker acts *bona fide* and without knowledge of the misapplication.

**Cessation of the powers of directors.** In the case of winding-up of the company all the powers of its directors cease from the commencement of the winding-up, except to the extent to which either the company in a general meeting, or the liquidators, may sanction the continuance of their powers. Thus the banker will not be justified in honouring cheques drawn by the directors after he has received notice of the passing of the resolution authorising the winding-up of the company.

**Partnerships' or trading firms' accounts.** 6. A banker should not open an account in the name of a partnership unless one or more of the partners apply to him to do so. Except when the partner applying for the opening of an account is deprived of that power, and the fact is known to the banker there can be no legal objection to his opening the account. However, a banker should, as far as possible, get a letter signed by all the partners stating the nature of their firm's business, the names and addresses of all the partners and of those authorized to operate on the account in the firm's name. The



authority given should include powers to draw, indorse, and accept bills, and mortgage and sell property belonging to the firm. It appears that according to English Law a partner in the absence of a special authority from other partners to execute a legal mortgage of the partnership property can only give an equitable charge. This position is probably due to the technical rule of the English Law that an agent cannot execute a deed on behalf of his principal unless so authorized by deed. However, the English doctrine that a partner, unless specially authorized by deed, cannot mortgage the immovable property of the firm is not applicable in India. Where a partner is managing the firm's business he has the power of borrowing as incidental to the powers of trading, and consequently he can pledge its property. In England as a partner has no implied power to bind his co-partner by deed, the banker has in order to obtain a valid legal mortgage to see that either all the partners are parties to the mortgage or that the partner executing the mortgage is vested with the power to do so on his behalf as well as on behalf of his partners. If this is done, a sleeping partner cannot evade his liability and the banker is not put to the trouble of proving the interest of all the partners in the firm. As the drawing of cheques is necessary in almost all kinds of business the bank is justified in honouring cheques drawn in the firm's name and signed by a partner, unless it has received special instructions to the contrary, or knows that the partner who has drawn the cheque in the firm's name is not authorized to do so. In this case, a notice from the partners to the bank cancelling the authority of any one of the other partners would be a sufficient notice to act upon. Similarly, any partner has an implied authority to stop the payment of any cheque drawn on the partnership account and the banker is bound to comply with the instructions issued by that partner. This also holds good in the case of overdrafts.

In the case of retirement of one, or more partners interested in the account, the liability of such partner or partners to the bank ceases so far as future transactions are concerned, but in case of no notice having been given to the bank of such retirement, the retiring member will continue to be liable even for advances made after his retirement. As a rule, however, on the retirement of the old partner and the admission of a new one, the banker releases the retiring partner and accepts the newly constituted firm as his debtors in place of the old firm. In case the banker does not want to relinquish his claim against the retiring partner he will close the old account and open a new one in order to avoid the application of the rule in *Clayton's case*,\* according to which a payment shall discharge the earliest debt whether of the customer or of the banker remaining unpaid.

There appears to be no objection to a banker complying with the request to transfer money from the partnership account and partner's private accounts to that of the private account of a partner to that of the firm of which he is a member, but the banker must not collect a cheque drawn in favour of the firm and place the amount to the credit of the private account of a member of that firm without making proper enquiries. Also, it is not permitted to set off the balance of a person's private account against the account of the firm of which he is a partner. In case a banker wishes to transfer money from a customer's private account to the credit of an overdrawn account of the firm of which he is a partner the banker should give reasonable notice of his intention to do so. Further, the death of any partner does not preclude a firm from withdrawing funds standing to the credit of the partnership account, nor is a firm bound by the acts of a partner after he has become insolvent.

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\* (1816) 1 Merivale 572.

7. A banker should not open a joint account except upon the receipt of an application from all persons interested in the account. This does not apply to a partnership account, which may be opened on the application of a partner as he can bind his other partners. When opening an account in the names of several persons who are not partners the banker should obtain specific directions as to which of them shall operate upon the account; but in the absence of such directions he should honour only such cheques as are signed by all those in whose names the joint account has been opened. The full title of the account should appear in the bank's books as well as on every cheque drawn.

8. A banker dealing with joint Hindu families will find it to his cost that certain laws and customs relating to succession and transfer of rights put serious obstacles in the way of his providing financial accommodation on the security of what is ordinarily considered to be a normal and reliable bank security. For example in a joint Hindu family governed by the Mitakshara Law all the members acquire a right in the ancestral property by birth and the accrual of that right dates from conception, so that there is always the danger of having a transaction impugned by a person who at a date of transaction was not born. In order to charge a joint family estate it is necessary that all the members of the family should join in the execution of the deed or should give their consent, or it should be made by the head of the family in his capacity as *karta* or manager. The powers of the *karta* are, however, limited and a charge created by him is binding on the family property only if the loan is taken for a purpose necessary or beneficial to the family or is in discharge of a lawful antecedent debt. In the event of a suit being filed by a banker who has granted loan on the security of the joint family estate the burden of proof that

before he made the loan he satisfied himself that the loan was taken for purposes beneficial to the family lies on the banker. To avoid this and several other difficulties some banks require a Hindu customer desiring to open an account to furnish a statement to the effect that the money deposited in his Fixed Deposit, Current or Savings Bank account is the personal or self-acquired property of him or herself and not the property of a joint Hindu family.\*

9. As a rule, a banker will avoid opening accounts of executors and trustees but can have no objection in doing so if the accounts are to be in their private capacities. Otherwise he will thoroughly acquaint himself with the official document appointing the executors or trustees and will have no dealings with the estate until the official probate or letter has been inspected by him. In practice, however, a banker sometimes grants facilities to persons whom he knows to be representatives of the deceased pending the issue of the official documents. In case a banker comes to know that the funds deposited belong to a trust fund and they are being misapplied he cannot escape liability on the ground that the bank account was in the name of a trustee. When the account is opened for two or more trustees the banker should have clear instructions as to who shall sign cheques, or other instruments, but in the absence of such instructions, one executor can deal with the funds of the estate on behalf of others, whereas in the case of the trustees, all must sign on every occasion, because, the appointment of several trustees is taken to mean that the property shall be under their combined control. On the death or resignation of one of the executors, there is no need for the banker to modify the course of business. However, in the case of death or retirement of one of the trustees, it is not safe for the banker to assume that the surviving or the continuing trustees

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\* See Appendix A, Form No. 2 E.

possess full powers to deal with the property. In case the executors borrow money, as usually they do, to discharge urgent debts or obligations of the deceased they are personally liable for the advances so obtained, unless they are secured by specific assets of the deceased. An executor has no power to borrow money so as to bind the general estate. In the case of a married woman being appointed as executrix she will not bind her husband for her acts unless the latter meddles in her duties in the capacity of executrix.

10. Accounts are often opened in the names of non-trading institutions such as Clubs, Committees, Funds, Associations, etc. The managing committee passes a resolution authorising the opening of an account with a particular bank and authorises a certain member to operate on the same. The banker should ask for an authenticated copy of the resolution which is generally signed by the secretary and countersigned by the chairman of the meeting of the committee at which it is passed. As these voluntary associations are usually unincorporated they can neither be sued nor are their individual members liable for any overdraft as long as the members signing the cheques do so in their representative capacity and not in their individual capacity. However, if the account is opened in the following form "R. A. Dubash, account Parsi Gymkhana," then Mr. Dubash can be held personally liable for the overdraft created by the drawing of cheques on this account.

11. The constitution, powers and restrictions of the different kinds of local authorities are sufficient to make a little volume, and therefore, it is not our intention to deal with the subject at length. As these bodies usually dispose of large funds, bankers regard them as desirable customers, although their accounts require special precautions. When a banker is asked to open an account in the name of such a body he should satisfy himself as to the

authorized method of dealing with its funds, the persons by whom cheques are to be drawn, and all other relative questions. It must, however, be remembered that, in allowing overdrafts to such bodies, a banker runs a great risk as their borrowing powers are circumscribed and obscure.

12. When a customer gives notice to his creditors that he has suspended or is about to suspend payment of his debts or when he has filed in the Court a declaration to the effect that he is unable to pay his debts a banker should stop all business transactions with him. The whole of the debtor's property will be vested in the hands of the official receiver who will administer it for the benefit of the creditors generally, the object being to protect the property from the debtor and also from any individual creditors who may seek to obtain preferential treatment. Special care should be taken in the case of undischarged bankrupts who are subject to a number of disqualifications. For instance, an undischarged bankrupt cannot obtain credit for more than Rs. 50. He will be regarded as guilty of a misdemeanour if he engages in a trade or business under another name, without disclosing the fact of his bankruptcy.

13. Bankers should also be careful while dealing with persons appointed to wind up the affairs of a company. A liquidator's business is to realise the company's assets and to collect any amounts owing by the shareholders. He has to apply the funds thus collected in payment of the company's debts and distributing any balance among its shareholders. He has the powers to borrow money against the security of the company's assets, and to draw, accept, make and indorse bills and notes in the name and on behalf of the company. In the exercise of any such powers he is free from any personal liability.

14. An agent without any power of attorney, who represents that he has authority to act on behalf of his principal is personally liable for breach

of warranty of authority for any loss sustained by a third party who relies upon the representation even if the agent in making the representation acted 'in good faith and was under the impression that he had such an authority. A banker who has been authorized to allow an agent to operate a customer's account should at once suspend all operation on that account upon hearing or being notified of the principal's death, insanity or bankruptcy. While signing on behalf of his principal an agent must indicate that he signs per procuration or on behalf of the principal unless of course he has been authorized to sign the principal's name. Otherwise he will not be exempt from liability merely by adding to his signature words describing himself as an agent. A banker has to be on his guard while dealing with agents with limited authority. He should on no account allow an agent, or in fact any person, to pay into his own private account cheques which he has endorsed per pro. or on behalf of another without satisfying himself that the agent has the authority of the principal to do so. While dealing with a factor, however, the banker will run no risk if the transactions are in good faith and the advances are secured by goods or documents of title deposited by him.

15. As a Mohammedan can informally bind property by verbal *wakfs* or trusts, the banker is confronted with certain doubts and difficulties while advancing money against an estate owned by a Mohammedan. The defence in certain cases in a mortgage suit against a Mohammedan will be that the property mortgaged is in fact the subject of religious endowment. Besides, a Mohammedan cannot bequeath more than one-third of his property by will, and in case he dies intestate the heirs to his estate will have to be traced up to the third generation in the ascending and descending lines. Consequently a banker, who does not know the Mohammedan Law may be confronted with insurmountable difficulties.

Mohammedan  
customers.

## CHAPTER V.

### CHEQUES.

In an earlier chapter we have seen that the London goldsmiths were the first bankers in England. They received from their customers money on condition to pay its equivalent when called upon to do so. When a customer wished to make payment to a third party he used to write an order to his banker to pay the sum required. According to some research scholars these notes or orders were the earliest forms of cheque currency. The cheque or "drawn note" as it was called, which was used by the customers of the goldsmith banker, was simply an ordinary slip of paper containing a written order addressed to the banker by his customer, to pay on demand, the sum specified therein. Sometimes it was payable to an individual only, sometimes to an individual or order, and sometimes to an individual or bearer. Under the *Lex Mercatoria*, from the very outset the drawn note appears to have been regarded as a bill of exchange, which if made out to order, could be endorsed in favour of a third party. But later research,\* however, has proved that the origin of the cheque dates back to the times much earlier than that. It was customary in the Stuart England to pay persons who had claims upon the Exchequer, such as State officials, Crown servants and pensioners, by means of what were termed "debentures." Except during the Cromwellian period they were generally drawn in Latin, usually with several of the words abbreviated, and when cashed at the Exchequer were kept as vouchers that the money was paid. These Treasury Exchequer money-orders were cashed

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\* The Banker, January 1929, p. 29.



at the Exchequer when funds allowed and the goldsmith bankers readily discounted these orders. They were verbose documents authorizing payment to be made to the payee or his assignees at the Exchequer usually out of certain funds specified on the order. From this it can be safely concluded that the "drawn note" of the goldsmiths was not a novel instrument, but a copy of the similar device used in connection with the issue of public money from the Exchequer. We give below two specimens of the drawn notes used by goldsmiths.\*

(1)

Mr. Childe,—Pray pay unto the bearer the sum of twenty pounds and place it to the account of

London, August 29, 1689.

E. Pollexen.

(2)

Bolton, 4th March, 1684.

At sight hereof pay unto Charles Duncombe, Esq., or order, the sum of four hundred pounds, and place it to the account of

Your assured friend,  
WINCHESTER.

To

Captain Francis Child,

Near Temple Barre.

The advantages of cheque currency over other forms of currency are manifold. Firstly, it is very convenient to make and receive payments by means of cheques. Not only can a cheque be drawn for the required amount—small or large—but also the making and receiving of payments by specially crossed cheques involves no such risks as are involved in money payments. Secondly, a payment by cheque practically does away with the

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\* Macleod's Theory and Practice of Banking, Vol. I, Chapter IV, Sec. 4, p. 282.

need of insisting upon a receipt from the payee although receipts should as far as possible be obtained. Those making payments by cheques are saved the botheration of proving the payments as the paying bank will, if necessary, prove them by the production of the cheque bearing the payee's endorsement, by entries in its books, and by evidence of its clerks. Lastly, were it not for the cheque facilities, it would not only be difficult but also more costly to make such payments. It is only in comparatively recent years that besides Great Britain other European countries, such as France and Germany, have realised the several benefits arising from the use of this form of currency and consequently are doing all they can to encourage its use.

The use of cheques has become very popular in England during the last eighty years or so. After the passing of the Peel's Act in 1844, Joint Stock banks having the right to issue notes finding that they could not increase their note currency beyond the maximum amount laid down under the Act, and others without such right to issue notes had to encourage the use of cheque currency for the expansion of their business. So general has the use of cheques become that out of every £ 1,000,000 paid into a London bank in 1922 only £ 8,900 consisted of notes and coins. In 1918 the stamp duty on cheques was raised from a penny to two pence, and many anticipated that this would mean a decrease in the use of cheques. But Lord (then Mr. Philip) Snowden, when Chancellor, stated that whereas in the year before the raising of the duty the number of cheques used was 298,000,000 the total had risen in 1923—1924 to 366,000,000.\* The important part which the cheque currency plays as a means of exchange in modern times cannot be disputed. The amount of cheques passing annually through the Bankers' Clearing Houses in England is about £m. 40,000 as against only about Rs. 1,800 (£m. 140) crores in India in 1930.

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\* The Times (London), 6th May, 1923.

As will be clear from the figures given above the use of cheques in India is comparatively small, firstly, because as stated in Chapter II the number of banking offices particularly having regard to the size of the country is absolutely small; secondly, many banks in the past and some even to this day require cheques to be drawn in English, a language known to only a small fraction of the population;\* thirdly, the people have not yet acquired full confidence in banks; fourthly, the stamp duty on cheques acted as an obstacle in the free use of cheques upto 1927; fifthly, the advantages of this form of currency are not yet fully realized; and lastly, the facilities for the encashment of cheques are far from satisfactory. Until lately it used to take generally half-an-hour to cash a cheque in most of the big banks in India particularly in cities like Bombay and Calcutta, whereas, banks in England and the other western countries except in very rare cases do not take more than a couple of minutes in making payments of cheques presented at their counters. The prompt payment of cheques in England and other countries of the west is partly due to the fact that cashiers employed by them are fairly responsible members of their staff and not employees of firms of shroffs to whom the cash work of a bank is generally entrusted in India.

As regards the first of the causes stated above there is only one banking office for 484,066 of persons in India as compared with one for 4,816 in United Kingdom and therefore it is no wonder that the use of cheques in India is very small. In order to develop the banking habit among the people in this country it is essential that the number of banking offices must be increased considerably.

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\* According to the recent Census Report the proportion of literates in English is males 25 and females 3 per mille of 20 years and over only.

With regard to the second reason it may be mentioned that even among the literate Indians only a few can correctly draw a cheque in the English language in which the cheque books of most of the banks are printed. A single scratch or a mistake in the date or amount of the cheque vitiates the instrument. However, it is gratifying to note that some banks have begun to allow their customers to draw cheques in their vernaculars, notwithstanding the additional expenses entailed by it. After all, for the staff of a bank, particularly when the Indian element is being gradually introduced, it should be no more difficult to detect forgeries or signatures in vernaculars than those in English. It is very desirable that the banks should be required to honour cheques drawn in any one of the recognised vernaculars of the presidency in which the drawee bank is situated. It will not only encourage the use of the cheque currency but also provide an opening, however small it may be, for the better class of young men of the country in the joint stock banks.

Thanks to the abolition of the stamp duty in 1927 which was strongly recommended in the first edition of this book the use of cheques not only in the presidency towns and other big commercial centres, but also in the small cities appears to have considerably increased. The slight loss which the Government must have suffered as a result of this measure will be more than made good by the large expansion in the cheque currency and the growth of the banking habit.

As regards the other reasons given above, it is sufficient to state that a great deal depends upon the banks which can by offering greater facilities for the encashment of cheques increase considerably their use both to their own advantage as well as that of the country. The demand for currency in winter for

the movement of crops not only causes stringency in the money-market which affects adversely both industrial and commercial interests, but also the cost of transferring money over long distances has to be borne by the people. The cheque habit is sure to bring about ease in the money-market and reduce the charges for the transfer of funds.

### **Suggestions for Popularising the use of Cheques.**

Having regard to the numerous advantages and the indispensibility of cheques for the industrial and commercial advance of India it is suggested that propaganda work for encouraging the cheque habit should be carried on by Government and banks. The expenditure incurred in the direction will pay perhaps tenfold in the long run. The following are some of the ways in which Government and banks can help in popularising the use of cheque currency :—

1. Post offices in large cities may be required to stamp all letters with words such as "For mutual benefit use cheques or payments." The traders and merchants, in their own interest, can help in propagating the benefits of cheque currency. The author knows of an instance in which a bill collector of a certain firm in Bombay decamped after collecting some bills because the payments by most of the company's customers were not made by crossed cheques. This made the company circulate printed cards to its patrons with the following words :— "Safety First, for mutual safety, please make payments by cheques." It would be still better to use crossed cheques.

2. Government should accept freely cheques in payment of land revenue and other payments due to government. At present cheques are received at the treasuries managed by the branches of the Imperial Bank of India. As the Bank has not yet opened branches at all the district headquarters and as cheques are not generally accepted at the taluka sub-treasuries the use of cheques in payment of land revenue is by no means general. This facility should as far as possible be extended.

3. Government can contribute materially to the development of the cheque habit by making all payments for amounts over Rs. 100 or 200 by cheques.

4. Banks should provide adequate facilities for the prompt encashment of cheques across the counter. In this connection their attention is invited to the practice of the English banks whose cash departments are manned by their own staff and not by the employees of the shroffs who are paid a lump sum per year for doing the cash work in some of the Indian banks.

5. Local authorities, *e.g.*, municipalities and corporations can also lend a helping hand in encouraging the use of cheques by making payments by cheques on account of salaries to their employees receiving Rs. 100 or over per month and other disbursements and by offering to receive their dues in cheques.

6. Lastly, banks may, subject to certain restrictions allow cheques to be drawn against the Savings Banks Accounts. Some of the foreign Exchange Banks in India offer this facility to their customers and there appears to be no reason why the Indian Joint Stock banks should not follow suit.

Before examining the various questions affecting the drawing, collecting, and payment of cheques, it is necessary to explain the legal definition of the term 'cheque.' According to Sec. 6 of the Negotiable Instruments Act, 1881, "A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand." In order to understand this definition, it is necessary to know the definition of a bill of exchange.

Definition of a bill of exchange.

The definition of a bill of exchange as given in Sec. 5 of the Indian Negotiable Instruments Act, 1881, is as follows :—

"A 'bill' of exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a

certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument."

"A promise or order to pay is not 'conditional' within the meaning of this section and Sec. 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain."

"The sum payable may be 'certain' within the meaning of this section and Sec. 4, although it includes future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due."

"The person to whom it is clear that the direction is given, or that payment is to be made may be a 'certain person' within the meaning of this section and Sec. 4, even if he is misnamed or designated by description only."

### **Requisites of a cheque.**

1. A cheque must be *an instrument in writing*. Oral orders, although they may have the other requisites cannot be treated as cheques. The law does not lay down any restriction as to which writing materials are used for making out a cheque. As Mr. Sheldon\* says the writing may be done by means of (a) pencil or pen, (b) a typewriter, and (c) printed characters. Although there is no legal flaw in the case of cheques written with an ordinary lead pencil yet the banker should discourage this practice. It is true that during the Great

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\* Practice and Law of Banking, 2nd Edition, p. 2.

War many of the cheques although drawn in copying pencil by those in the fighting lines were honoured by the English bankers; but the exceptional circumstances of the war were very largely responsible for the bankers' action in the matter. All the same, it must be remembered that honouring of cheques written in pencil entails many risks, as the alterations unauthorized by the drawer are easy to make and difficult to detect. Consequently, bankers in their own interests should not make it a practice to honour cheques drawn in pencil.

2. There was an old-world courtesy about the early cheque which is conspicuous by its absence in the bald and part-printed documents of to-day. The modern instrument must contain *an unconditional order*. As regards the 'order,' it is not necessary that the word "order" or its equivalent must be used to make the document a cheque. Generally the order to a bank is expressed by the word 'pay.' Even if the word 'please' precedes the word 'pay' the document will not be regarded as invalid merely on this account. On the other hand an instrument in the following form is not considered to be an order:—"Mr. Black, please to let the bearer have seven pounds and place it to my account, and you will oblige." It is necessary that the order must be *unconditional*—which term is explained to a certain extent by para. 2 of Sec. 5 of the Indian Negotiable Instruments Act quoted above. If the banker is asked to do something else in addition to the payment of money, the order becomes conditional, and therefore, the instrument cannot be regarded as a cheque. For instance, if the cheque has a receipt form attached to it and the following words are added "provided the receipt form at the foot is duly signed and dated," or if the amount is made payable out of a particular fund the order will be regarded as conditional, hence the instrument containing such a direction cannot be regarded as a cheque. If, however, the order indicates that a particular account is to be debited with



the amount, or makes a statement of the transaction which leads to the cheque being issued the order will remain unconditional. Similarly, if the direction regarding the signing of the receipt is addressed to the customer, it will not invalidate the instrument merely on that ground, as the aforesaid direction is no part of the order given to the banker.

### 3, The instrument must be drawn on a *specified banker*.

On a specified banker. This means, firstly, that it should be drawn on a banker and not on any other person, and secondly, that the name, and preferably also the address of the banker should be specified so as to avoid any mistake regarding the person from whom the payment of the cheque is to be demanded. Thus it will be seen that orders on Government Treasuries such as "supply bills" as distinguished from orders on the Imperial Bank of India cannot be legally regarded as cheques because, they are not drawn on a banker—a term which cannot be used for the Government of India; consequently no statutory protection under Secs. 85, 128 and 131 of the Indian Negotiable Instruments Act, 1881, can be claimed for such instruments.

It should also be noted that according to Sec. 3 of the Bills of Exchange Act, 1882, a bill of Bankers' drafts. exchange must be addressed by one person to another, *i.e.*, the drawer and the drawee must be two different persons, firms or institutions. Consequently in England when an order for payment is addressed by one branch of a bank to the head office or another branch of the same bank, the drawer and the drawee cannot be regarded as two distinct institutions. The definition of a bill of exchange according to the Indian Law, on the other hand, does not require that the order must be addressed by one person to another. Hence the drafts drawn by the head office of a bank upon its branches, or *vice versa*, can be treated as cheques if they satisfy other requirements of the law. In a recent case *Slingsby and others v. Westminster*

*Bank, Ltd.,*\* His Lordship Finlay J. was of opinion that the officer of the Bank of England signing the interest warrant for payment of interest on the war stock was acting as an agent of the Government and was drawing on the Government funds deposited with the Bank, and the document was therefore a cheque.

4. The order must be for the payment of *a certain sum of money only*. It is clear that orders asking the banker to deliver securities or certain other things, although their nature may be easily determined cannot be regarded as cheques. It must also be noted that the sum of money to be paid must be certain. According to the definition of the term 'certain' given above there appears to be no legal objection to the drawing of a cheque in sterling or any other foreign currency on a bank in India, if the rate of the particular foreign exchange is stated or the rate at which it is to be converted into Indian currency is left to be determined by the course of exchange. Similarly, if the amount is payable with interest at a given rate upto the happening of a specified event, which is certain to happen, although the time of its happening may not be certain, the amount payable is regarded as a certain sum.

5. In order that an instrument shall be a valid cheque, it should be made payable to or to the *order of a certain person or the bearer*. It should be noted that 'person' in law is not necessarily a human being. It may be one of the 'bodies corporate' constituted by law which have power to contract in accordance with certain well-recognised legal principles. Joint Stock Companies, partnerships, local authorities, building and friendly societies, clubs, trade unions, guilds, charity

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\* (1931) 1 K.B. 173.

associations, and institutions of various kinds can be regarded as 'persons.' Moreover, to denote the payee with certainty does not necessarily mean that his name should be given in the instrument. He may be designated as the holder of an office. Thus, instruments payable to the principal of a college or a school or the treasurer or secretary of a particular society, club, or union are regarded as payable to a certain person, as they are payable to the persons holding such offices. Even the misnaming or designating of a person by his office only does not vitiate the instrument.

6. The order must not be expressed to be payable otherwise than *on demand*. It is not necessary to use the words 'on demand' or their equivalent as when the drawer of an instrument asks the drawee to pay and does not mention the time it is meant to be payable on demand according to Sec. 19 of the Negotiable Instruments Act.

Payable on demand.

It has already been stated in Chapter II that the right to draw cheques on a banker depends upon the relationship between a banker and his customer who has a current account with him. This right is limited, however, to cases where the amount of cheques to be drawn does not exceed the balance standing to the credit of the customer's account or the amount of the overdraft agreed upon. It is not always necessary that there should be an adequate balance to the credit of the customer's account at the time the cheque is drawn, but there must be reasonable prospects of the customer being able to deposit sufficient money before the cheque is presented so as to enable the banker to honour it. In cases where no such reasonable prospect exists the drawer of the cheque may be convicted for fraud, if it is proved, that he persuaded the person to whom he gave the cheque to part with his goods or valuables in return therefor, which that person otherwise would not have done.

Drawing of cheques.

### Use of the Printed Cheque Forms.

The use of the printed cheque forms supplied by the banker upon whom the customer desires to draw is advisable, firstly, because it makes forgery of cheques more difficult as the forger will have to obtain one of the forms supplied to the customer before he can forge the signature of the customer; secondly, because alteration of the amount of a cheque drawn on a printed form can more easily be detected than when it is drawn on an ordinary piece of paper; thirdly, because the banker by referring to the cheque book records can easily know the name of the drawer whose signature may not be quite legible; fourthly, it saves the trouble of drafting cheques in accordance with the requirements of law; fifthly, it is easier to send advice to the banker to stop the payment of a certain cheque by giving him its number; and lastly, the counterfoils in the cheque book can be used as a record of the various payments made by the customer by means of such cheques. With a printed form not only can there be no mistake in the wording which will make the instrument inconsistent with the legal definition, but also there is the convenience of having a printed address and a ready stamped form if cheques are liable to stamp duty.

In England most banks usually honour cheques even when they are not drawn on the forms supplied by them. In India, some bankers follow the practice of their English *confreres* but others usually decline to pay such instruments. Dishonouring them can only be justified under the terms of the special agreement between the banker and the customer, as the law does not lay down that the printed forms supplied by the bank must be used. As a matter of fact, all banks by their rules referred to in the application form which a customer is made to sign at the time of the opening of an account, make it obligatory on his part to draw cheques on their

printed forms only, and in such cases the banker is justified in refusing to honour cheques drawn otherwise. It is desirable, however, that if a customer happens to draw a cheque on a piece of paper or a form other than the one supplied by the banker, the latter should honour it if the form is in order and there is nothing to arouse his suspicion respecting the amount, but he may request his customers to draw cheques only on the forms supplied to him by the bank. It is, therefore, desirable that the customer of a bank should use the printed cheque forms supplied to him by the particular bank on which he wishes to draw the cheques and not even the form supplied to another customer by the same bank.

### Dating of Cheques.

The drawer of a cheque is expected to date it before it leaves his hands as otherwise it will be difficult to determine whether or not the cheque has been in circulation for an unreasonable length of time. In case a cheque has not been dated by the drawer, any holder can insert a date. Although the banker on whom the cheque has been drawn can fill in the date, undated cheques are usually returned unpaid by most of the banks.

The drawer can date a cheque with a date earlier or later than the one on which it is actually drawn. Ante-dating and post-dating. If a cheque is post-dated, it is no longer an instrument payable on demand and therefore, strictly speaking, it should be stamped as a bill of exchange. However, when a post-dated cheque is presented on or after the date given on it, the paying banker should have no objection to honour it merely on the ground of its being originally post-dated.

It has been seen that a cheque can be made payable to the order of a specified person or to the bearer of the instrument. The words "Pay to——Order" are to be construed as equal to "Pay to my

order.”\* If, however, the blank space left between ‘Pay’ and ‘Order’ is filled by the holder, the paying banker would be justified in paying the amount to the person named or his order. Cheques are sometimes made payable to fictitious persons, but in such cases they are treated as bearer cheques. Cheques in favour of impersonal payees, *e.g.*, wages, petty cash, etc., are generally cashed as bearer cheques. Such cheques are meant to show that the amounts are drawn for the payment of wages, petty cash, etc.

If it is desired that the payment of a cheque should be made to the payee only, it is necessary to Restrictive payee. add the word “only” after the payee’s name and to strike off the words “bearer or order.” According to the Indian Law, before the passing of the Negotiable Instruments (Amendment) Act, 1919, the effect of merely striking off the words “order” or “bearer” after the payee’s name was to restrict its negotiation, although the bankers in India, like their *confreres* in England, treated such cheques as “order” cheques. This conflict between the law and practice was brought home to the bankers of this country by a ruling of the Bombay High Court† (see *infra*, page 13) which led to the passing of the Negotiable Instruments (Amendment) Act, 1919.

It is necessary to mention clearly the amount of money which the drawer desires his banker to pay. Amount of the cheque. The sum is usually stated in words as well as in figures so as to avoid mistakes. No blank space should be left on the cheque between “Rupees” and the amount, both where the sum is written in words and where it is written in figures. Otherwise an unscrupulous holder might fill in the blank space on the left and increase the amount to be paid. If the alteration is such as cannot

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\* Law and Practice of Banking, H. P. Sheldon, 2nd Edition, p. 8.

† (1919) XXI B.L.R. 1.

be noticed by the paying banker by the exercise of reasonable care and the altered amount is paid by him, the latter is justified in debiting his customer's account with the amount actually paid.

In order to prevent fraudulent alteration of the amount of the cheques, various devices are used in modern times. Sometimes the amounts are perforated by means of perforating machines. In other cases words such as "Below rupees one hundred" are written at the top or across the cheques.

We have already stated that there appears to be no legal objection to cheques being drawn in foreign currency in which case the payment should be made at the rate of exchange current at the time of presentation. In *Cohn v. Boulken*,\* where the cheque was drawn for 7,680 francs (Paris) on one of the London offices of the London County Westminster and Parr's Bank Ltd., evidence was given to the effect that it was the settled practice of bankers to pay to the payees of such cheques the amount in sterling at the rate current on the day and at the hour of presentation, and to debit the drawer's account with the same, and the judge ruled that the document was for a sum certain within the meaning of Sec. 8 of the Bills of Exchange Act, and therefore a cheque. However, it is the practice of bankers in England to offer a draft for the amount in foreign currency in case the holder is not satisfied with the rate at which the paying banker offers to convert the cheque in foreign currency into home currency.

It may be stated generally that an alteration is material which in any way alters materially the operation of the instrument and the liabilities of the parties thereto, irrespective of the fact

Material alterations.

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\* (1920) 36 T.L.R. 767.

whether the change is prejudicial or beneficial to the payee. Any alteration is material which alters the business effect of an instrument if used for any business purpose.\* So, any change in an instrument which causes it to speak a different language in legal effect from that which it originally spoke or which changes the legal identity or character of the instrument either in terms or the relation of parties to it is a material alteration. The instrument thus altered may not be regarded as a cheque at all.

In a recent case *Slingsby v. The Westminster Bank Ltd.*†

*Slingsby v. Westminster Bank.*

one Cumberbirch, a solicitor of good repute and standing, altered a cheque which he had himself made out in favour of a firm of stockbrokers as "Pay to John Prust and Co., or order," and had it signed by the executors as drawers. The cheque was payable to "John Prust & Co." After this came a space and then the ordinary printed words "or order." Instead of handing it over to Prust & Co. and instructing them to buy the War Loan for which purpose the cheque was originally drawn Cumberbirch altered the cheque by writing in the space left before the words "or order," the words "Per Cumberbirch and Potts." Thus the whole of the filling of the cheque save the drawers' signatures was in the handwriting of Cumberbirch. Needless to say, that none of the executors, knew of, or authorized the alteration. Cumberbirch thereafter endorsed the cheque as "Cumberbirch and Potts" and filling a paying in slip at the Manchester branch of the Westminster Bank Ltd. paid it into the account of a company, the Palatine Industrial Financial Co., Ltd., of which he was a chairman and to which he was indebted, as being a payment on his private account. When the roguery came to light after

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\* *Adus v. Cornwall*, (1868) L.R. 3 Q.B. 513; *Gour Chandra Das v. Prasanna Kumar Chandra*, 33 Cal. 812.

† (1931) 2 K.B. 583.



about four months the executors as true owners of the cheque, brought an action against the Westminster Bank claiming that by collecting its amount they had wrongfully converted it. Finlay J. before whom the action came, held the bank protected and said, "In my opinion no question of negligence really arises. Apart from S. 82 of the Bills of Exchange Act, 1882, there can be no question of negligence, for there was no contractual relation between the defendants (Westminster Bank) and the plaintiffs (executors); and S. 82 is in my opinion inapplicable because this document when it came into the hands of the bank was *not a cheque*. But in as much as the question of negligence was fully argued before me and evidence was led on it, it is desirable that I should state my view on it. It is, in my opinion, established that the defendant bank acted not merely in good faith, but without negligence. The care must be that which a reasonable businessman would exercise in his own affairs, and the clerks and other officials must display and exercise that degree of intelligence and knowledge ordinarily required of persons in their position. . . . It is necessary to remember that bank officials have to deal with a very large number of cheques every day, and cannot be expected to scrutinize each cheque and the circumstances surrounding it with the detailed care and skill of detectives."

The executors, thereupon, brought an action, this time against the paying bankers, the District Bank, claiming to be relieved of the debit of the £5,000 and alleged wrongful conversion of that amount on the ground that J. Cumberbirch unlawfully and without any authority had effected a material alteration in the cheque within Sec. 64 (1) of the Bills of Exchange Act, and that the actual endorsement was irregular and improper. They also held the defendants guilty of negligence and breach of duty to the plaintiffs in paying the cheque without due and sufficient enquiry. The defendants,

*Slingsby v. District Bank.*

however, put forth the plea in Lord Atkin's statement that—"the customer, on his part, undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery."\* Mr. Justice Wright however decided that in the actual facts of the case before him there was no absence of "reasonable care" as to result in any breach of contractual duty. It was not a breach of duty to leave a space between name of the payee and the words "or order," and therefore the plaintiffs were entitled to the relief which they claimed. It was also held that the endorsement was not in accordance with the mandate.

From the decision in the above case it is clear that a banker must be very careful whenever there is a material alteration in the cheque presented. He should see that such alteration has been made with the drawer's consent or authority and is confirmed by his signature. As to the various instances of material alterations the following are important :—

- (1) alteration of the date of the instrument with the purpose of accelerating or postponing the time of payment ;
- (2) alteration of the place of payment ;
- (3) alteration of the sum payable and the rate of interest it carries ;
- (4) alteration affecting the number or relation of the parties or their legal character.

Alteration of the date of a cheque, or the changing of an 'order cheque' into a 'bearer cheque' requires initials although in the latter case certain banks require full signature. Other material alterations should generally be evidenced by the full

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\* Vide p. 39, footnote.

signature of the drawer. In case of cheques drawn by two or more persons jointly alterations require the initials or the signatures, as the case may be, of all the drawers.

In order to make the instrument a valid cheque, it must be signed by the drawer himself or by some person duly authorised by him. In the latter case, unless the banker has been supplied beforehand with a specimen signature of the person signing on behalf of the customer the banker cannot be expected to honour such cheques, as he is not able to satisfy himself about the genuineness of the signatures on the cheques. When signatures are put by means of rubber stamps, cheques should not be honoured, as it is difficult to say whether or not they are thus stamped by the authority of the drawer or by another similar stamp forged by a third person. There is no legal objection to the cheque being signed in pencil, although from the paying banker's point of view, it is a very undesirable practice as such signatures are easily blurred or defaced. Specially printed forms with the name and address of the drawers are sometimes supplied to customers drawing a large number of cheques. Some banks allot a number to every customer having a current account and stamp it on every cheque form in the blank cheque books supplied to him. Thus a cheque bears two numbers, *i.e.*, the cheque number and the customer's number. This facilitates the finding out the name of the drawer when his signature on the cheque may not be quite legible. The customer should sign the cheques in accordance with the specimen signatures supplied by him to his banker, otherwise the latter may have to dishonour and return them with a slip marked "Signature differs." It is, however, not necessary that the drawer of a cheque should always sign his own name. He may sign for instance, as "Delhi Stationery Mart" the name under which he is carrying on his trade or profession if the account is kept in that name.

In the case of illiterate persons, cheques can be signed or indorsed by means of a mark witnessed in the banker's presence by a person known to him who should also give his or her address. As far as possible the latter should be some one not employed by the bank. When the person is so ill that he cannot sign his name, his mark may be witnessed by his medical attendant who will furnish a medical certificate stating that the drawer of the cheque was too ill to sign his or her name.

### Crossed Cheques.

After drawing a cheque its drawer has to decide whether or not he should cross it. In England until the early fifties of the last century cheques were almost invariably drawn payable to bearer, because the Stamp Acts of 1782 and 1815, while they subjected bills in general to duties according to their amounts, retained the duties on drafts on bankers payable to bearer on demand at one penny. Therefore as a rule the cheques were made payable to bearer. Prior to the year 1853, when drafts on a banker payable to order on demand were rendered valid if stamped with one penny stamp, it had long been usual with bankers' clerks, presenting cheques at the clearing house, to stamp the names of their banks across the cheques as an indication of the channel through which they were presented and as cheques were generally payable to bearer other persons also with a view to prevent their proceeds going into the hands of persons having no title to them generally crossed them with the names of the bankers through whom the payment was desired to be made. When the name of the payee's banker was not known, it became usual to cross the cheque with two lines and insert the words "& Co." between them to indicate that it was to be paid to some banker. This also ensured safety in case a clerk carrying cheques to the clearing house were assaulted and robbed.

In the year 1856 the crossing which was till then considered to be a memorandum to the banker came under legislation. It was enacted that whether the cheque was crossed with mere two lines or with the name of a banker the cheque must be presented through some banker. In 1858, the crossing was made a material part of the cheque, and thus was laid the foundation of the law of special crossings as it now stands. The holder of a cheque was recognised to have the power to cross the cheque, but no express remedy was given to him against the banker who paid the cheque in disregard of the crossing. It was also laid down that if any person would obliterate, add to, or alter the crossing with intent to defraud, he would be liable to transportation for life.

In the year 1876 those two Acts of 1853 and 1858 were repealed. The new Act contained in its first eight clauses the combined effects of the previous Acts.

Sec. 123 of the Negotiable Instruments Act of 1881 defines a general crossing as follows:—

“Where a cheque bears across its face an addition of the words “and Company” or any abbreviation thereof, between two parallel transverselines, or of two parallel transverse lines simply, either with or without the words “not negotiable” that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.”

Special crossing is defined in Sec. 124 of the Negotiable Instruments Act as follows :—

“Where a cheque bears across its face an addition of the name of a banker with or without the words “not negotiable,” that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.”

## DIFFERENT FORMS OF CROSSING.

## Specimens of General Crossings.

1

2

&amp; Co.

3

Not Negotiable.

4

Not Negotiable

## Specimens of Special Crossings.

5

The Central Bank of India, Ltd.

6

Account Payee.

The Imperial Bank of India.

7

The Bank of India Ltd.

8

Not Negotiable.

The Punjab National Bank Ltd.

Forms (1) to (4) are specimens of general crossings. The words "& Co." are written on the cheque when the drawer does not know the name of the payee's banker, but this is not a necessary part of the crossing. By crossing a cheque generally, the banker is directed not to make payment except through another banker and thus a person who is not entitled to receive its payment is prevented from getting it cashed at the counter of the paying banker.

Forms (5) to (8) given on page 161 are specimens of special crossings. It will be seen that a special crossing requires to be written on the face of the cheque the name of the banker to whom or to whose collecting agent payment of the cheque should be made. Lines are not essential for a special crossing. A special crossing makes the cheque still more safe, as a person having no claim will find it more difficult to obtain payment, except through the banker named on the cheque, who is likely to know the payee, and, therefore will not collect it for any other person. In order to avoid all risks of a thief obtaining payment instead of the rightful owner of the cheque, the words "payee's account" or "account payee" should be added to the crossing, which will ensure that the receiving bank is to collect the amount for the benefit of the payee's account only. This addition to the crossing does not affect the paying banker, who is not required to see that the cheque is collected for the payee's benefit. It is quite safe to send such cheques through the usual postal channels for the reason just indicated.

There is another form of crossing bearing the words "not negotiable" which serves practically the same purpose. It does not, as is sometimes erroneously assumed, make the cheque not transferable, but it deprives the cheque of the special feature of negotiability. Such a cheque is like a stolen fountain pen or a watch, the transferee of which does not get a better title

Not negotiable  
crossing.

than its transferor. However, a banker who has collected a cheque crossed with the words "not negotiable" is protected by Sec. 131 of the Negotiable Instruments Act, 1881, provided he has complied with the conditions to be explained in the next chapter.

It will be clear from the above that the drawer of a cheque can cross it if he likes. When he issues an open cheque any holder of the same can cross it generally, convert a general crossing into a special one, or add the words "not negotiable." When a cheque is crossed specially, the banker in whose favour it is crossed may again cross it specially to another banker the latter acting as agent for collection for the former. If a cheque is crossed by the drawer, he alone has the right to cancel the crossing by writing the words "pay cash" and his full signature on the cheque. Ordinarily such cancellation should be supported by the full signature of the drawer if the cheque is required to be cashed across the counter.

Unless the cheque is handed over in a complete form to the payee, with the intention that the proceeds thereof shall be paid to him or his order, or to the bearer it is not regarded as issued. The liability of the drawer commences with the proper issue of the cheque and is unaffected by the fact that the issue thereof resulted from fraud practised upon the drawer. According to Sec. 21 of the Bills of Exchange Act, 1882, which corresponds to Sec. 46 of the Negotiable Instruments Act, 1881, the drawer is not liable for a cheque, until he has issued it, or unless he is precluded from denying its issue. It is to be remembered that if the cheque gets into the hands of a holder in due course, a valid delivery of the same by all parties prior to him so as to make them liable to him is presumed until the contrary is proved.\*

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\* Bills of Exchange Act, 1882, Sec. 21.



It is advisable for mutual safety that cheques sent by un-registered post should be crossed specially. However, should a bearer, uncrossed or a generally crossed cheque be sent by ordinary post at the request of the payee and it be stolen in course of transit by a thief who is successful in receiving payment for the same the loss will have to be borne by the payee on the ground that the post office was employed as his agent. However, the mere sending of the cheque by post does not amount to delivery thereof. In *Jagjivandas Jamnadas v. The Nagar Central Bank Limited*\* it was held that simply because it was a practice of the plaintiff to send his cheques and hundis by ordinary post, it did not amount to a request from the indorsee firm that it approved of the mode of sending cheques or hundis by ordinary post. The paying banker was not held liable, because he was not negligent, but had paid the cheque according to its tenor in the ordinary course of his business. It is hard to believe that any drawer would in his own interest send such instruments by ordinary post. Supposing he does so, the loss would devolve on him in case the cheque is lost in transit, as the post office would be regarded as his agent.

Before considering the legal position and rights of the payee it will not be out of place to examine the legal definition of 'holder.' Sec. 8 of the Negotiable Instruments Act, 1881, defines a 'holder' as follows :—

“The ‘holder’ of promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.”

“Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.”

“The above definition which seems to have been borrowed from a passage of Byles in the 13th edition of his book on “Bills” is not considered to be quite happy. Firstly, it should be noticed that the term ‘holder’ in this definition does not include a person who though in possession of the instrument has not the right to recover the amount thereon from the parties, such as the finder of a lost instrument payable to bearer, or a thief in possession of such an instrument. In this respect it differs from the definition of the term given in the Bills of Exchange Act, 1882. Secondly, no person can sue on a negotiable instrument unless he is named therein as a payee or unless he gets his title as an endorsee or bearer. Thirdly, it is clear that the title of the person claiming as holder must be acquired properly. A person who takes the instrument either under a forged or invalid indorsement such as that of a thief cannot be regarded as a “holder.”

Whereas in case of dishonour the holder has the right to claim the amount of the cheque from either its drawer, payee or indorsers, he has no claim except in the case of marked cheques or as provided for by Sec.129, against the paying banker as there is no privity of contract between the holder of a cheque and the banker on whom it is drawn. It is for this reason that when it is desired to stop the payment of a lost cheque the holder has to ask the drawer to instruct the banker to do so as otherwise the paying banker may refuse to do the needful. However, there is no harm in intimating to the banker about the loss so as to put him on his guard. At the same time the drawer should be asked to stop the payment of the cheque. The paying banker's attitude in the matter is quite justifiable for the simple reason that as explained already he is in duty bound to honour his customer's cheques and in case of a wrongful dishonour he will make himself liable to pay damages to his customer only. In the

absence of instructions from his customer he has no means of knowing how far the statement of a person representing himself to be the holder of a cheque is correct. However, bankers take special precautions before honouring cheques reported to have been lost.

Assuming that the cheque has reached the hands of the payee, we have to examine his rights and duties. By accepting a cheque, the payee does not lose his right to claim the amount due to him in case the cheque is dishonoured. He can either base his claim on the original debt in payment of which the cheque was given to him, or he can sue the drawer of the cheque for the amount thereof, provided the payee is not guilty of negligence in presenting it for payment resulting in a loss to the drawer. For instance, if the drawer gives the cheque to the payee on a certain day and the cheque is not presented for a month thereafter, during which period the banker upon whom it is drawn fails, and if the drawer had sufficient balance for meeting the cheque at the time it was drawn, the drawer's liability to the holder will be reduced to the extent of the loss which the former suffers through the negligence of the latter. It has already been explained that the holder of a cheque whether he is the payee or the indorsee, has no right of action against the banker upon whom the cheque is drawn, unless either the latter pays the amount of the cheque contrary to the directions given by the crossing thereon,\* or has marked the cheque as good for payment.

The question as to what is a reasonable period during which a cheque may be presented, depends upon various circumstances, such as the banker's place of business, etc. Speaking generally, the cheque must be presented for payment or paid into the bank by the following working day. The examples given below will make

Payee's rights and duties.

Meaning of reasonable time for presentation of cheques

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\* See Negotiable Instruments Act, 1881, Sec. 129.

clear the meaning of "reasonable time" as regards presentation of cheques :—

1. Suppose a cheque for Rs. 500 drawn by Mr. A. K. Joshi on a bank in Bombay is received by Mr. T. S. Karaka in the same city on 1st March, 1932. In the absence of any special circumstances justifying the delay he must, if he wishes to be free from the charge of negligence on the ground of holding the cheque for an unreasonable time either have it presented to the paying bank or have it sent into his bank on the following working day, 2nd March, 1932, in which case it should be presented by the collecting banker on or before the 3rd March, the first working day after the receipt provided that 2nd and 3rd March are not holidays.

2. If the drawee bank upon which the cheque is drawn is not situated in the same place where Mr. Karaka carries on his business the latter must post the cheque to an agent in the town where the paying bank is situated or pay it into his own bank not later than the following working day.

It is for this as well as for certain other reasons that a cheque received should not be transferred by its recipient to his creditor, but should be sent without delay for collection to his own bank. If the presentment of the cheque is delayed it may not be honoured owing to the drawer's insolvency or as a result of his balance being depleted which may result in subsequent loss and inconvenience. Moreover when a person's creditor receives a cheque drawn by a client of the former, his debtor, he may like to have direct dealings with the client with the result that the person may lose his business. Again, the transference of a cheque from hand to hand may delay its presentment at the drawee bank which may in the meantime go into liquidation. There is also the danger of the cheques being in circulation for an unreasonable period and the drawee bank may refuse payment on the ground of the

Drawbacks of  
protracted circulation  
of cheques.

cheque being a stale one. The bankers of the creditor to whom the cheque is transferred may wind up business before collecting the amount. Hence it is advisable not to transfer a cheque received from one's debtor to one's creditor; one should draw a cheque on one's own bank and send it to one's creditor in payment of debt due to him.

When a cheque remains in circulation for an unreasonable period which is generally six to twelve months according to the practice of the bankers of different places, it is returned with a slip marked "stale, requires confirmation." The limitation period in this case will be computed from the time the cheque is dishonoured and if three years go by without the payee's claiming the amount from the drawer, the debt will be time-barred. Sometimes, cheques are sent to the drawee banks to ascertain whether they will be honoured on presentation, and should a bank mark the cheque, the holder is entitled to recover the money from the bank, provided it is presented within a reasonable time after its being marked as the marking of the cheque amounts to an acceptance by the bank.

It must be remembered that neither in India nor in England is a cheque regarded as an assignment of the amount named therein out of the funds in the hands of the drawee for the payment thereof. In Scotland, however, a cheque operates as an assignment of the sum for which it is drawn in favour of the holder from the time it is presented to the drawee. Consequently, a payee in India cannot have a claim against the drawee bank unless, of course, the bank has marked it even though it be through negligence or inadvertance. In Scotland, however, a payee can claim the amount from the drawee bank. In France the holder of the cheque is entitled to receive the amount if available from the drawee bank and can demand the whole of it even if the credit balance of the drawer is inadequate.

Cheque not an  
assignment of debt.

**A bearer cheque, i.e., a cheque payable to bearer or a person or bearer is transferable by mere delivery, but order cheques must be indorsed also before their encashment or negotiation.**

Transference of cheques.

**"When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto...he is said to endorse the same, and is called the indorser."\***

Indorsement defined.

The word endorsement is derived from the Latin word *en dorsum*, meaning 'on the back.' In its popular sense, it means a writing on the back of an instrument but technically it is applicable to negotiable papers, and means the writing of one's name on the back thereof with a view to transfer the same. If, as a result of rapid circulation the back of the paper is entirely covered by indorsements the holder may tack or paste on a piece of paper—called an *allongde*—and the subsequent endorsements may be made thereon.

Indorsements are of various kinds, such as 'indorsement in blank,' 'indorsement in full,' 'conditional indorsements,' 'restrictive indorsements' etc.

Kinds of indorsements.

The mere signature of the indorser at the back of the instrument without mentioning the name of any particular person in whose favour the indorsement is made would be said to be an indorsement in blank. Such an indorsement makes it payable to bearer and consequently the instrument thus indorsed can be negotiated by mere delivery. It must, however, be remembered that according to the Indian Law as it stands at present such an instrument can be converted into an order one even if it were a bearer one originally. If, however, the indorser adds a direction to pay the amount specified in the instrument to or to the order of a certain

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\* The Negotiable Instruments Act, 1881, Sec. 15.

person the indorsement is said to be in full. By indorsing his name at the back of an instrument the indorser guarantees to his immediate indorsee or subsequent holder that the time the cheque left his hands he had a good title to it and that it was genuine in every particular. He also attests thereby that all the indorsements made prior to his are genuine. Ordinarily, an indorser binds himself to pay upon no other condition than the dishonour of the instrument on due notice of dishonour to him. However, if he likes he can add some condition to his own liability on the instrument and the indorsement will be termed as a conditional indorsement. For instance, he can add the words "Without recourse," to his indorsement and exclude his liability on the instrument. Again, he may make his liability depend upon the happening of a contingent event or make the right of the indorsee to receive the payment depend upon the happening of such an event. The conditions thus added may be either conditions *precedent* or conditions *subsequent*. If the former, no right to recover the amount passes to the indorsee until the fulfilment of the condition. However, if it be a subsequent condition the indorsee's right is defeated at its fulfilment. Thus for example, if the indorsement is "Pay to X if he returns from England within a year" then the right to receive payment is absolute only if Mr. X arrives within a year after the indorsing of the instrument. As an example of a condition precedent it may be mentioned "Pay to X upon his attaining majority." Here the indorsee gets title to the amount only if X lives till his attainment of majority. The conditions attached to indorsements do not affect the negotiability of the instrument indorsed. In this the conditional indorsement differs from another kind of indorsement known as the restrictive indorsement by which the indorsee's right of negotiating the instrument indorsed is restricted or excluded by express words. Sometimes, a restrictive indorsement may merely constitute the indorsee as an agent to indorse the instrument or to receive its contents for the indorser or for

some other specified person. For example, if a person Mr. P. N. Kapur endorses any negotiable instrument to bearer as (a) 'Pay the contents to S. M. Joshi only' or (b) 'Pay S. M. Joshi for my use' or (c) 'Pay S. M. Joshi for the account of Mr. P. N. Kapur' or (d) 'the within must be credited to S. M. Joshi' he will be restricting the negotiability of the instrument thus indorsed.

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## CHAPTER VI.

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### PAYMENT OF CUSTOMER'S CHEQUES.

The banker's obligation to honour his customer's cheques has already been referred to in Chapter II.

**Limitations of banker's duty to honour his customer's cheques.** This obligation, however, is subject to several limitations. Firstly, the banker is not bound to honour any ambiguous instruments which do not conform to the conditions of the legal definition of cheque. Instruments which are not intended to operate as cheques must not be honoured by the banker as that would entail certain risks. Secondly, this obligation on the part of the banker continues only so long as the state of the customers' account allows the cheques to be honoured. Either the customer's account which is drawn must have sufficient credit balance or in the case of an over-draft arrangement the amount of the cheque presented should not exceed the drawing power allowed to him, though the banker may reserve to himself the right of reducing or cancelling the over-draft without any previous notice. Other conditions and circumstances limiting the banker's duty to honour his customer's cheques will be considered at their proper place as we proceed along with this chapter.

The banker's position in respect of cheques drawn upon him is not a very enviable one, because if

**The paying banker's risks.** he honours a cheque through oversight, when there are no funds to the credit of the drawer he may lose his money, and if he dishonours it through inadvertance, he may be called upon to pay damages for wrongful dishonour. He must either honour the cheque or refuse its payment at once as he cannot ordinarily take

time to consult his legal adviser, his customer or any one else. If with a view to gain time for such a purpose the banker marks the cheque 'present again' and hands it back to the person presenting it the latter has the right to treat it then as a dishonoured cheque in which case he need not present it again. Such a remark should not be made when the customer's balance does not allow of the banker's honouring the cheque, and if there is no likelihood of the customer paying in funds to enable the banker to meet it. It therefore behoves the banker to be very careful in honouring or dishonouring cheques. We shall presently see the various precautions which it is incumbent upon a banker to take in order to safeguard himself against such contingencies; but, before doing so, we should again emphasize the necessity of obtaining references or letters of introduction from new customers before their accounts are opened unless, of course, they are already well known to the banker. When this precaution is taken the risk in honouring cheques is considerably lessened.

(1) The first thing for a banker to do when a cheque is presented for payment at the counter is to see whether it is an open or a crossed cheque.

Open or crossed cheques. If the latter, the holder should be asked to present the cheque through a banker if it is a generally crossed cheque or through the specified banker or another acting as his agent for collection if it is specially crossed. However, it does not mean that the amount of a crossed cheque can only be credited to the account of the collecting banker with the paying banker. If a banker honours such a cheque by paying it to a person other than a banker over the counter, the true owner may require the banker to pay him any damages which he may have sustained by the banker's action.\* The duties of the paying banker as regards crossed cheques are laid down in

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\* Negotiable Instruments Act, 1881, Sec. 129.

Secs. 126, 127 and 129 of the Negotiable Instruments Act as given below :—

Sec. 126. “Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.”

“Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.”

Sec. 127. “Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.”

Sec. 129. “Any banker paying a cheque crossed generally otherwise than to a banker, or cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.”

Sec. 79 of the Bills of Exchange Act, 1882, sets forth the duties of the paying banker with regard to crossed cheques as follows :—

(1) “Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.”

(2) “Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.”

" Provided that where a cheque is presented for payment, which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be."

From the above it will be seen that a banker is not justified in paying a cheque in a manner contrary to the directions conveyed by the different kinds of crossings. Firstly, in case he does so and any loss results to the drawer the banker cannot debit his customer's account as such a payment by the banker will be contrary to the instructions of his customer. Secondly, he will lose the statutory protection given to him by Sec. 128 of the above quoted Act as such a payment cannot be regarded as a payment in due course. Thirdly, remedy is given to the true owner against the paying banker and the true owner will be entitled to be compensated to the extent of the loss he may suffer by reason of the banker making payment of the cheque in a manner contrary to the directions conveyed by the kind of crossing it bears in spite of the fact that there is generally no privity of contract between the holder of the cheque and the banker. In the case of a crossed cheque, therefore, a banker should, without bothering himself about its form, the state of the drawer's account or his signature on the instrument, return it unpaid with a remark that the same should be presented through a bank.

Risks of payment  
contrary to cross-  
ing.

(2) The second point with regard to which the cheque should be examined is whether it is drawn upon that particular branch, or office, of the bank at which it is presented, because, no branch or office, other than the one at which the customer has his account, is expected to meet his cheques. But, sometimes, when a customer is visiting certain cities where he is likely to need money during his stay he may apply to his banker to authorise his branches, or agents in those cities to cash that customer's cheques up to a certain amount, and the banker will meet his customer's wishes. When such a request is granted, a specimen signature of the customer is of course sent to each of the branches or agents concerned. In such a case, it is doubtful whether the banker can without informing his customer earmark the amount for which authority is given to the branches or agents to cash his cheques, but he should certainly make a note of the fact on the ledger account of the customer. This will keep the banker on his guard.

(3) The third point on which the banker should satisfy himself before honouring a cheque is to see that it is not mutilated, cancelled or torn. If a banker honours a cheque which was torn by the customer in such a way as to give sufficient evidence of his intention to cancel it, the former cannot debit the latter's account. In case, however, a cheque is torn accidentally the drawer must confirm it by words such as "accidentally torn by me." When its payee or holder happens to tear it by mistake the banker must either get confirmation from the drawer or ask the payee's banker to guarantee payment. A cheque torn into two or more pieces is generally returned with the remark "mutilated cheque," but cheques torn at the corners are generally paid.

(4) The fourth point about which the banker has to be sure is that the instrument is drawn in the proper form, is duly dated and fully conforms to the legal definition of cheque, when

Is the cheque drawn on the particular branch at which presented ?

Correctness of form.

it is presented to him. We have already considered the chief requisites of a cheque. It may, however, be mentioned here that no difficulty in this connection is likely to arise where the customer has used the printed form supplied to him by the banker. But if the cheque has been drawn on a piece of paper the paying banker should particularly guard against its being a conditional order, as the effect of honouring an instrument containing a conditional order may result to him in loss. In case of such orders the banker must see that the condition laid down by the drawer is complied with if he wishes to debit the amount of the instrument to his customer's account. Moreover, the paying banker will be deprived of the statutory protection to which he is otherwise entitled if he pays a conditional order as the protection given by Secs. 85 and 128 of the Negotiable Instruments Act, 1881, can only be claimed in respect of cheques which, as explained above, are unconditional orders.

(5) The fifth point the banker should remember in connection with the honouring of cheques presented is, that the cheque must be neither a post-dated nor a stale one. Should a cheque bear a date later than that on which the holder presents it at the bank, the banker should not honour it for the following reasons:—

Risks in honouring a post-dated cheque before due date.

- (a) The customer may stop payment before the due date of the cheque and in case the cheque is honoured before that date the banker may lose his money.
- (b) The banker has no right to debit his customer's account with the amount of such a cheque before its due date, and if he does so, he runs a serious risk. For instance, if a customer's cheque for Rs. 500, dated March 12, 1932 is presented on March 2, 1932 and is honoured, thus reducing the customer's credit balance to Rs. 100, and

another cheque drawn by the same customer for Rs. 300, dated March 2, 1932 and presented on March 3, 1932 is dishonoured on the ground of insufficiency of funds, the customer will be entitled to claim damages for the wrongful dishonour of his second cheque.

(c) If the banker pays such a cheque before its due date and holds it until it matures, the customer may become insolvent or insane, or die in the meantime in which case the banker would not be entitled to debit the amount to his customer's account.

(d) A banker paying such a cheque will not be entitled to the statutory protection on the ground that such a payment cannot be regarded as having been made in due course. Of course, if a cheque originally post-dated is presented to the bank on or after its due date the banker can have no objection to honour it on the ground of its having been originally issued as a post-dated cheque.

(6) It is also necessary for the paying banker to see that

the cheque presented is neither stale nor out of date. A cheque is said to be stale when

it has been in circulation for an unreasonably long period. What is to be regarded as an unreasonably long period is determined by the nature of the instrument, the usage of trade, the practice prevalent among bankers and the circumstances of the particular case. It is understood that bankers in India regard a cheque stale when it has been in circulation for more than six months. There may be a difference in the practice in some parts of India. In the case of dividend warrants, however, the issuing companies usually do not honour them if they are presented after three months, unless, of course they

are subsequently validated by the companies concerned. Similarly a stale cheque may also be honoured by the drawee bank after getting it confirmed from the drawer.

(7) As previously stated, the amount payable should be absolutely certain and unless the instrument

Where the amount in words and figures differs.

possesses this requisite it cannot be regarded as a valid cheque; the banker should satisfy himself that the amount has not been altered and that, if it has been altered, the alteration is supported by his customer's full signature. When the amount stated in words differs from the amount expressed in figures, a banker in England may pay the amount given in words,\* but the usual practice is that the bankers either offer the smaller amount, or, return the cheque with the remarks "amount in words and figures differs." Sec. 18 of the Negotiable Instruments Act, 1881, which corresponds to Sec. 9 (2) of the Bills of Exchange Act, 1882, lays down: "If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid." Where the amount is given in words only the banker must pay the same lest his refusal may render him liable for damages for a wrongful dishonour of his customer's cheque. When the amount is stated in figures only a cheque is generally returned with the remark "amount required in words." If the cheque is presented again with the amount filled in by a person other than the drawer the banker should ask for the drawer's confirmation. However it is open to the bankers in India to refuse to honour cheques in which there is a discrepancy between the amount given in words and that given in figures because they can be regarded as ambiguous instruments.

A banker should examine carefully that the amount in the cheque has not been altered. When the amount of a cheque has been fraudulently

Raised amounts.

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\* Bills of Exchange Act, 1882, Sec. 9.



raised and the banker, failing to notice the alteration, honours the cheque, the question arises whether or not he may debit his customer's account with the amount paid. In the first place, it is quite clear that if the customer draws the cheque in his usual way or if the fraudulent alteration can be detected by the exercise of reasonable care and diligence on the part of the banker the loss. It is equally certain that if the drawer intentionally or negligently facilitates the fraudulent raising of the amount by leaving blank spaces before or after the words and figures expressing the amount, and thus leading to the banker being defrauded, the customer's account can be debited with the amount paid. However, it is not always easy to decide whether the banker or his customer should bear the loss in cases where the latter, in drawing the cheques, innocently, but carelessly, leaves spaces before or after the words specifying the amount, which is raised fraudulently and the banker, failing to detect the alteration, pays the increased amount. For a long time, the decision in *Young v. Grote*,\* (favourable to the banker) was held to apply, but strong doubts were expressed as to this being sound law after the decision in the case of *Colonial Bank of Australasia v. Marshall*.† Fortunately for the bankers, however, the earlier view was re-established by the judgment in the case of *The London Joint Stock Bank v. Macmillan and Arthur*.‡ In this case it was clearly held that it is incumbent upon the customer to exercise care in drawing the cheques. But it is no part of the customer's obligation to exercise extraordinary care in the drawing thereof. If the blank space is left to the right of the payee's name, as it happened in a recent case (*Slingsby v. District Bank Ltd.*)§ the learned Judge did not think such a space as unusual, and held that there was no breach of duty by the drawer to the bank.

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\* (1827) 4 Bing. 253.

† (1918) A.C. 777.

‡ (1906) A.C. 559.

§ (1931) 2 K.B. 588.

(8) The law affecting material alterations is that the instrument is avoided except as against the party who has himself made, authorised or assented to the alteration and to subsequent indorsers thereof. It is not necessary that the alteration should be made by one of the parties to the bill but even if it is made by a stranger the party supposed to have the custody of the instrument has to suffer, for it is he who is bound to preserve its integrity. In *Slingsby and others v. Westminster Bank Limited*,\* Finlay J. held that the document with a material alteration, when it came into the hands of the bank, was not a valid cheque at all.

(9) It is also necessary for a banker to see that the state of his customer's account is such as permits the honouring of the cheque presented. We have already stated that it is not necessary for a customer to have a credit balance when his cheque is presented. If he has sufficient credit under the arrangements made for an overdraft, the banker should honour the cheque. The banker need not transfer money of the customer from another account to the account against which the customer's cheque is drawn, although when he knows that the two current accounts belong to one person in the same capacity, the banker does not mind doing so if it will prevent his dishonouring the customer's cheque. In that event he should inform the customer about the transfer. Moreover, except in cases where the banker has expressly or impliedly agreed to treat as cash cheques paid in by the customer for the credit of his account, he need not take into consideration the amount of such cheques when ascertaining whether his customer's balance is or is not sufficient to meet his cheques. If he has received from his customer certain cheques to be credited to the latter's account, and they have not been cleared and appropriated by the time a cheque drawn against them is

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\* (1931) 2 K.B. 583.

presented, the banker may return it with a slip bearing the remark "effects not cleared, present again."

The banker has no right to retain any part of the customer's balance to meet contingent liabilities of his customer. For instance, if he has discounted bills of exchange to which his customer is a party the banker cannot retain any part of that customer's balance to meet the contingent liability of the latter in the event of those bills being dishonoured at due dates. However, in the absence of any agreement, express or implied, there appears to be no objection to a banker refusing to pay his customer's cheque if the latter is indebted to him provided the debt is due from him in the same capacity as his credit balance.

The banker should neither offer a part of the amount of the cheque nor disclose the state of his customer's account. Apparently, a banker incurs liability to his customer in case he discloses the state of the latter's account to one of his creditors for the purpose of giving him an advantage over his other creditors.\* Under the French Law the payee has the right to demand what balance there is at the account against which a cheque is drawn as a part-payment in case of insufficiency of the balance. In *Foster v. Bank of London*,<sup>†</sup> the defendant had disclosed the state of the plaintiff's account to another of their customers who held a bill accepted and a cheque drawn by the plaintiff. Thus they enabled the holder of the cheque to pay in the difference between its amount and that of the customer's balance and so to obtain payment of the balance in preference to other creditors. The Chief Justice in the course of the judgment said that the banker could not go further than to say "Not sufficient assets." The reasonable and proper occasions for the banker to disclose the state of his customer's account have already been discussed.‡

\* Hart's Law of Banking, 3rd Edition, p. 221.

† (1862) 3 F. and F. 214.

‡ Vide, p. 53.

In this connection it is perhaps desirable to consider the general rule for the appropriation of the amounts paid in by the customer. It is the customer's right to have the amounts which he pays in credited to such accounts as he likes. If he has two or more accounts he may specify the account for the credit of which he sends the remittance. But, if he fails to exercise this right at the time of paying in the amounts the banker can appropriate the payments at his discretion. When neither the customer gives special directions for the appropriation of the amount paid in, nor the banker makes use of his right to appropriate as he likes, the rule in *Clayton's case*,\*—a payment shall discharge the earliest debt, whether of the customer or the banker, then remaining unpaid,—applies.

This right of the customer to assign a payment to the discharge of a particular debt does not apply where the payment represents one of the instalments payable on a decree. *Harkisondas v. Nariman*.† The facts of the case were as follows:—A decree was passed against a judgment-debtor who was required to pay a certain specific amount due by him in four equal instalments. The judgment-debtor paid the first instalment and obtained from the Court official receipt for the second instalment. For the next two instalments he obtained the receipts for them as for the third and the fourth. Needless to say, that the creditor claimed these instalments to be the first, second, and third instalments respectively. On his suing for the recovery of the fourth he got the answer that the amounts being already appropriated as second, third, and fourth instalments respectively, the creditor could only claim on account of the first instalment, which was by that time time-barred. The learned judge remarked that a receipt by a Court official in absence of the knowledge of the creditor was

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\* *Banking and Negotiable Instruments* by F. Tillyard, 4th Edition, p. 123.

† (1927) 29 Bom. L.R. 953.

not binding on him, and that "it would be fraud on the judgment-creditor if, without his knowledge, the judgment-debtor made payments into Court and took receipts for the second, third and fourth instalments with the intention of not paying the first instalment." The rule in *Clayton's case* is that if a man owes two debts upon two distinct causes and pays the creditor a sum of money, the payer has a right to say to which account the money so paid is to be appropriated. In this case as there was only one judgment debt which was ordered to be paid in several instalments, it could not be said that the debtor owed several debts within the meaning of Sec. 59 of the Contract Act, 1872, as to enable him to apply the payments to the discharge of any particular debt.

(10) The next point on which the banker should satisfy himself is whether or not the cheque is required to be indorsed and if so whether or not the indorsements on the same are regular.

In England indorsement of a bearer cheque is not insisted upon by the paying banker. However, in India banks not only require the persons presenting bearer cheques for payment to indorse them but also to have themselves identified in case they are not known to the paying banks. Although not legally bound to do so, the holder of a bearer cheque generally raises no objection, probably because in case of his refusal the banker may insist upon having a stamped receipt for the amount paid to the holder. The view that a bearer cheque is always a bearer cheque was held generally in this country also until in *Forbes Campbell & Co. v. The Official Assignee of Bombay*\* Shah Ag. C. J. and Kincaid J. held that where a hundi is drawn in favour of a payee or bearer and is indorsed by the payee to a third person it ceases to be a bearer hundi and is payable to the

**Indorsements.**

**Bearer cheque requires no indorsement.**

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\* (1925) 27 Bom. L.R. 34.

third person or his order. The above ruling upset the ordinary banking practice to such an extent that the Associated Chambers of Commerce of India and Ceylon passed a resolution recommending to the Government of India to amend the law so as to give effect to the commercial practice which is also supported by English law. To remedy the defect a bill was introduced in the Legislative Assembly on 2nd September, 1929, but was thrown out on the ground that the holder's right to change a bearer instrument into an order one should not be done away with. Most of the Provincial Banking Enquiry Committees have recommended that the law should be amended and the Central Banking Inquiry Committee concur in this recommendation. The latter, however, add that they are not in favour of interfering with the present practice in regard to hundis which are not drawn in the form of cheques and therefore they do not recommend that the principle 'once a bearer, always a bearer,' should be applied to all hundis. However, it must be stated that till the law is amended the paying banker should take the precaution needed, otherwise he may have to suffer loss.

In the case of a cheque originally payable to order but having an endorsement in blank the banker need not trouble himself to examine the endorsement after the first endorsement as a negotiable instrument endorsed in blank is payable to the bearer thereof even though originally payable to order. If, however, an indorsee after the blank indorsement has indorsed it in full the cheque will be considered just an instrument originally issued as bearer but converted later on into an order one and the banker will have to satisfy himself with regard to the indorsements. Referring to instruments endorsed in blank, Lord Mansfield said, "I see no difference between a note endorsed in blank and one payable to bearer. They go by delivery, and possession proves property in both cases."\*

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\* *Peacock v. Rhodes*, (1781) L. Doug. 633.

**Endorsement of an order cheque is necessary unless the payee himself presents it for payment and even then, although the payee is not bound to endorse, bankers generally ask him to do so, or otherwise he may be required to give a properly signed receipt for the amount paid to him.**

**Endorsement of order cheques.**

The banker must see that the indorsements on order cheques are regular otherwise the payment made may not be regarded as payment in due course. In case an endorsement happens to be in a language, such as the Chinese, which the bankers in India are not expected to know, the paying banker can postpone the payment of the cheque pending inquiries or its confirmation provided the reason for postponing the payment is given in appropriate terms. The following are the general principles which should be borne in mind in connection with endorsements by diverse payees:—

(1) Complimentary prefixes and suffixes and other courtesy titles do not form parts of endorsements. Therefore words like Mr., Mrs., Miss, Lala, Babu, and Esquire, should not precede or follow the names of payees or endorsees in endorsements. Whether the letters "B." and "L." are admitted as the abbreviations of the titles "Babu" and "Lala" is a matter entirely for local custom. If in the place on which the cheque is drawn, it is a matter of established custom for the titles Babu and Lala to be abbreviated into B. and L. respectively and the letters are omitted in the indorsements, they would be regarded as in order. However, it is advisable that the practice be discouraged because sometimes these abbreviations may turn out to be the initial letters of the payee's full name. For instance, if a cheque is made payable to B. Rama Rau or order it is open to doubt whether the payee is Babu Rama Rau or the letter B. stands for Bengal, the first part of his name. A cheque made payable to Dr. A. B. Cooper may be endorsed as A. B. Cooper, M.D. and a

**Complimentary or courtesy titles.**

cheque payable to Sir Ganga Ram may be endorsed as Ganga Ram (Kt.).

(2) Where the name of the payee or endorsee is spelt incorrectly the spelling of the endorsement must correspond with that of the mis-spelt name. For instance, if a cheque is made payable to "P. S. Aiyar," or order, when the correct spelling of the payee's surname is "Iyer," the proper indorsement would be "P. S. Aiyar," but if the payee wishes he may add his correct name in brackets.

(3) Christian names need not be written in full. Even initials are sufficient. Richard Smith can endorse as R. Smith. In India, however, most of the banks require full names in the indorsements when the names of payees who are not Christians are given in full.

(4) In the case of females if the party is not a married woman she should endorse with her first name and surname, *e.g.*, Miss Hirabai Contractor should endorse as Hirabai Contractor. When a cheque is made payable to a married woman whose maiden name is given, she should endorse her cheque by giving her Christian name followed by her husband's surname with the word "nee" (= born as, formerly) and her maiden surname, *e.g.*, a cheque made payable to Miss Katherine Jones, now married to Mr. Robinson, should be endorsed Katherine Robinson nee Jones.

(5) In the case of illiterate persons the left thumb mark should be impressed and witnessed and the witness should be required to put down his or her address. If, however, a bearer cheque payable to A who is illiterate is endorsed in favour of B with A's thumb impression and B happens to be known to the paying banker it is not necessary to verify whether the thumb impression is or purports to be that of A, as the cheque is payable to bearer. It could



be that of anybody who held the cheque, but, as it does appear, it makes the cheque payable to B's order.

(6) Should the cheque be made payable to joint payees not in partnership, each must indorse, unless of course one of them is authorized to operate upon the joint account.

**Joint payees.**

(7) Cheques made payable to institutions, clubs, societies, and unions should be endorsed :—

For.....Club, Society or Union,  
J. B. SETH,  
Treasurer or Secretary.

**Cheques payable to companies.**

(8) Cheques made payable to a company can be endorsed in one of the following forms :—

(i) A. B. & Co., Ltd.,  
K. K. BHAGAT,  
Secretary or Director.

(ii) For A. B. & Co., Ltd.,  
K. K. BHAGAT,  
Secretary or Director.

(iii) On account of A. B. & Co., Ltd.,  
K. K. BHAGAT,  
Secretary or Director.

and (iv) On behalf of A. B. & Co., Ltd.,  
K. K. BHAGAT,  
Secretary or Director.

**Cheques with per pro. endorsements.**

(9) There is no legal compulsion on the banker to accept an indorsement with the words 'per pro.' (=per procuration). He can demand confirmation. The signer of "Per Pro." endorsement must give his full ordinary

signature. In England dividend warrants are not paid on per pro. endorsements.

(10) In a recent case\* where a cheque was drawn A. B. per X the evidence given from banking practice was that such cheques were endorsed, not A. B. per X but simply X. Though it is clear that the indorsement should in general correspond with the description of the payee, the witnesses in the case could give no reasons except their experience why the endorsement should not be A. B. per X. To quote the learned judge's decision "the practice which the defendants' witnesses say has been followed in their experience may well be convenient and save trouble and may have worked well in the past, at least so far as these witnesses know, but in my judgment the practice cannot be justified in law."

(11) Cheques made payable to deceased persons must be endorsed by their legal representatives. All trustees must sign, while any executor can endorse, *e.g.*,

For.....deceased

A DESAI,

(Executor.)

For.....deceased

..... }  
 ..... } Trustees,  
 ..... }  
 ..... }

With regard to the position of the indorsement it has been recently held that the mistake in the order of endorsements must not be allowed to change the rights of the parties.†

\* *Slingsby v. District Bank Limited*, (1931) 2 K.B. 588.

† *National Sales Corporation v. Bernardi*, (1931) W.N. 103.

To further elucidate the principles stated above we give below specimens of various endorsements, regular and irregular.

Payees.	Irregular endorsements.	Regular endorsements.	General Remarks.
<b>Of Individuals.—</b>			
Hiralal ...	Hiralal ...	Hiralal Shroff ...	Hiralal is a Hindu individual's name. In order to facilitate identification his surname or other name should be added * though it is not necessary in Upper India where people generally have no surnames.
Lala Panna Lal ...	Lala Panna Lal...	Panna Lal ...	Lala is a courtesy title.
Mrs. Karani ...	Mrs. Karani ...	Hirabai P. Karani, wife of J. Karani.	
Principal Naidu ...	Principal Naidu ...	R. Naidu.	
Prof. M. G Singh, Govt. College, Lahore.	Professor M. G. Singh or Prof. M. G. Singh, Govt. College, Lahore.	M. G. Singh,	
Sir Ganga Ram ...	Sir Ganga Ram ...	Ganga Ram (Kt.) by his constituted attorney X Y Z	Before accepting the cheque the banker will satisfy whether XYZ is in fact the constituted attorney of the payee.
Ganga Prasad.		Received satisfaction. Ganga Prasad.	An unusual endorsement. All the same, it is in order.

Payees.	Irregular endorsements.	Regular endorsements.	General Remarks.
<b>Of Individuals.—</b> (Contd.)			
M J Dubash per R. J. Modi.	R. J. Modi *	M. J. Dubash per R. J. Modi †	
<b>Of Clubs, Schools, etc.—</b>			
D. A. V. School ...	Harimal Handa Head Master D. A. V. School.	For the D. A. V. School, Harimal Handa, Head Master.	
Head Master, New High School.	New High School Headmaster.	R. Murzban, Head Master, New High School.	
The Punjab Club.	T. R. Khanna, Secretary, The Punjab Club ‡	For the Punjab Club, T. R. Khanna, Hony. Treasurer.	
The Secretary, The Punjab Club.	S. R. Rallan, Secretary.	For the Punjab Club, S. R. Rallan, Secretary.	
Harrington Chambers.	T. Talmaki, Manager, Harrington Chambers.	For the Harrington Chambers, T. Talmaki, Manager.	
Hony. Treasurer, Orient Club.		"For the Orient Club, A. B. Hony. Treasurer."	An endorsement A. B., Hony. Treasurer, Orient Club, would also be generally accepted.
<b>Of Firms and Joint Payees.—</b>			
Barclay's Bank Limited.	S. Brown ...	Per Pro. Barclay's Bank Ltd., S. Brown Manager.	

\* This was generally accepted.

† *Slingsby v. District Bank*, (1931).

‡ This is also accepted sometimes.

Payees.	Irregular endorsements.	Regular endorsements.	General Remarks.
<b>Of Firms &amp; Joint Payees.—(Contd.)</b>			
Smith & Co. ...	John Smith & Co.	Smith & Co.	
Barring Bros. ...	J. Barring Bros. ...	Barring Bros.	
Chopra Sons ...	B. N. Chopra Sons.	Chopra Sons.	
Messrs. Khanna...	Khanna & Co. ...	T. S. Khanna, Khanna Bros.  T. H. Khanna & Sons.  T. H. Khanna & S. Khanna.	
Messrs. K. L. Chopra.	K. L. Chopra ...	K. L. & K. L. Chopra.	
Misses Smith ...	Misses Smith ...	Smith Sisters.	
Messrs. Puri & Mehta.	T. Puri ...	For self and others T. Puri.	
S. M. Bharucha & Co.	S. M. Bharucha & Co. A. N. Bharucha, Partner.	For S. M. Bharucha & Co. A. N. Bharucha.	
The General Stores & Agency		For the General Stores & Agency XYZ Proprietor or per pro. the General Stores & Agency X Y Z.	
A.B.C.D.* ...	B.C.D. ...	A B C. or A B D. or A. C. D.	

\*The bank is instructed to accept signatures of any three of the four joint owners of the account both as regards cheques to be drawn on the account as well as for the purpose of indorsement of cheques payable to them jointly. Later the bank is informed by A that no instrument should be accepted on behalf of the joint account unless it bears his signature.

Payees.	Irregular endorsements.	Regular endorsements.	General Remarks.
<b>Of Joint Stock Companies.—</b>			
Sharma Trading Co., Ltd.	For Sharma Trading Co., Ltd., Daya Ram.	Per pro. Sharma Trading Co. Ltd., Jagdish, Sethi & Co., Managing Agents.	
Bawa Dhawan & Co., Ltd, per J. Sharma.	J. Sharma ...	Bawa Dhawan & Co., Limited., per J. Sharma	The cheque should be made payable to J. Sharma, Secretary or Manager of Bawa Dhawan & Co., Ltd.
B.D. & Co. Ltd., (in Liquidation).	Daya Ram ...	Daya Ram, Liquidator, B. D. & Co. Ltd.	
The Western India Life Assurance Co., Ltd.	M.J. Mistry & Co., Managers.	For the Western India Life Assurance Co., Ltd., M. J. Mistry & Co., Managing Agents.	
The Sialkot-Narowal Railway Co. Ltd.	The Sialkot Narowal Railway Co. Ltd.	For the Sialkot Narowal Railway Co. Ltd., Killick Nixon & Co., Managing Agents.	
<b>Of Executors &amp; Administrators.—</b>			
K. Karanjia (now deceased).	Dinbai Karanjia, widow of K. Karanjia.	S. Behramji and L. Kheshwala, Executors of the late K. Karanjia.	
S. Beramji & another, executor of the late K. Karanjia.	S. Behramji ...	For self and Co-executor of K. Karanjia, S. Behramji.	

Payees.	Irregular endorsements.	Regular endorsements.	General Remarks.
<b>Of Executors &amp; Administrators.—(contd.)</b>			
Representatives of the late K. Karanjia.	S. Behramji ...	For self and Co-executor of the late K. Karanjia S. Behramji.	
<b>Of Trustees —</b>			
The Trustees of the late Sir Vithaldas Damodar Thackersey.	For self and Co-trustees of the late Sir Vithaldas Damodar Thackersey, H. Desai.	H. Desai, L. Pattack, Trustees of the late Sir Vithaldas Damodar Thackersey.	
H. Desai & L. Pattack, Trustees of the late Sir Vithaldas Damodar Thackersey.	L. Pattack H. Desai ...	L. Pattack H. Desai, Trustees of the late Sir Vithaldas Damodar Thackersey	
Trustee of the late Sir Vithaldas Damodar Thackersey.	Per pro. Trustee of the late Sir Vithaldas Damodar Thackersey.	H. Desai, Trustee of the late Sir Vithaldas Damodar Thackersey.	
<b>Of Married Women.—</b>			
Mrs. Desai ...	Mrs. Desai ...	A. Desai (Mrs. H. Desai).	
Mrs. H. Desai ...	Mrs. H. Desai A. C. Desai.	A. C. Desai (Mrs. H. Desai).	
Miss K. Desai (now married).	Miss K. Desai ...	K. Dewan (nee Desai).	
<b>Of Official Payees.—</b>			
Official Receiver of K. L. Sharma & Co.	Per pro H. Desai Official Receiver of K. L. Sharma & Co.	H. Desai, Official Receiver of K. L. Sharma & Co.	
<b>Of Illiterate Persons.—</b>			
R. Taraporewala.	R. Taraporewala.	R. Taraporewala's thumb mark (X) witness K. M. Shah, 125, Esplanade Road, Bombay	

Payees.	Irregular endorsements.	Regular endorsements.	General Remarks.
<b>Miscellaneous.—</b>			
H. Desai or bearer.			Requires no endorsement unless a holder has turned it into an order cheque by indorsement in full.
Bearer, my wife...	No endorsement.		Requires endorsement of the drawer's wife ...
R. Masani per D. Mehta.	D. Mehta ...	R. Masani* per D. Mehta ...	
Self or order ...	No endorsement		Requires endorsement of the drawer
<b>Impersonal or fictitious payees.—</b>			
Income Tax or order.	No endorsement.		Requires endorsement of the Income-Tax Officer.
M. V. "Victoria" or order.	No endorsement.		Must be endorsed by the Captain or some other responsible authority on behalf of the motor vessel named.
Robinson Crusoe...	Robinson Crusoe.		Requires no endorsement as the payee is a fictitious person.

\* *Slingsby v. District Bank Ltd.*, (1931) 2 K.B. 588.



Payees.	Irregular endorsements.	Regular endorsements.	General Remarks.
<b>Dividend Warrants.—</b>			
H. Desai and K. Pandya.		H. Desai.	
H. Desai and another.	S. Kermana & another referred to.	H. Desai.	
H. Desai ...	Per. pro. H. Desai K. L. Sharma.	H. Desai.	

In the case of dividend warrants which are not in cheque form if there are more than one payee an endorsement by any one is considered sufficient and the payee has to give his full name as given in the body of the dividend warrant.

Let us now consider the position of the paying banker in connection with cheques bearing forged endorsements. As will be explained later on the banker cannot debit his customer's account with the amount of the cheque on which the latter's signature is forged, on the ground that such an order is not that of his customer. The banker can protect himself against the risk by comparing the signature on the cheque with the specimen signature supplied to him by his customer. Although it is true that the banker is required to pay the cheques drawn by his customer according to their apparent tenor, he cannot be expected to know the signatures of the payees and the endorsees of different cheques, and it is for this reason that the law protects the paying banker in case of forged endorsements.

Until 1853 cheques payable to order on demand were very seldom used in England as they were subject to the same stamp duty as bills of exchange. The Stamp Act, 1853, reduced the duty on such cheques to one penny, but

Origin of the statutory protection given to the paying banker.

further prescribed that any draft or order *drawn upon a banker for a sum of money payable to order* on demand which shall, when presented for payment, purport to be endorsed by the person to whom the same shall be payable shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof, and it shall not be incumbent upon such banker to prove that such endorsement or any subsequent endorsement was made by, or, under the direction or authority of the person to whom the said draft or order was or is, made payable either by the drawer or endorser thereof. Sec. 60 of the Bills of Exchange Act, 1882, lays down, "When a bill payable to order is drawn on a banker and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the endorsement of the payee or any subsequent endorsement was made by, or under the authority of the person whose endorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such endorsement has been forged or made without authority."

Similarly, Sec. 85 of the Negotiable Instruments Act, 1881, lays down, "Where a cheque payable to order purports to be endorsed by, or, on behalf of the payee, the drawee is discharged by payment in due course." It was contended by some writers on the subject that although the object of the framers of this Act was probably to grant to bankers in India the same amount of protection as given under Sec. 19 of the English Stamp Act, 1853, Sec. 85 of the Negotiable Instruments Act, 1881, failed to do so. Sec. 19 of the English Stamp Act (now incorporated in Sec. 60 of the Bills of Exchange Act, 1882) makes it clear that the paying banker in England is protected whether the forged endorsement is that of the payee or of any subsequent endorsees, but it was said that Sec. 85 of the Negotiable Instruments Act, 1881, seemed to protect the banker only in cases where the forged endorsement

was that of the payee and not that of the subsequent endorsee. It was not till 1914 that Sec. 16 (2) of the Negotiable Instruments Act extended the protection to the paying banker in cases where the forged endorsement is of an indorsee and not that of a payee, because the paying banker cannot be expected to know the signature of endorsees of different cheques.

As the protection given to the paying banker can be claimed by him only when the cheque drawn upon him is paid in due course we must pass on to see what is meant by "payment in due course." Sec. 10 of the Negotiable Instruments Act, 1881, defines the term thus:—"Payment in due course means payment in accordance with the apparent tenor of the instrument, in good faith and without negligence, to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned." Thus, the main requisites of payment in due course are:

(1) that the payment should be made in accordance with the apparent tenor of the instrument, that is, in accordance with the intention of the parties as it appears to be on the face of the instrument;

(2) that the person to whom it is made payable must be in possession of the instrument;

(3) that the payment thereof should be made in good faith and without negligence and under circumstances which do not offer a reasonable ground for concluding that the person to whom it is made payable is not entitled to receive the amount.

By the first requisite it is clear that the payment should be made on maturity to the person who is entitled to discharge it fully. Hence, payment of a post-dated cheque cannot be regarded as payment in due course. If the paying banker

honours a post-dated cheque before its due date he will not be entitled to the statutory protection should the endorsement of the payee transpire to have been forged, and further, he may become liable to pay damages, as explained earlier in the chapter. In order that the payment of a cheque shall constitute a payment in due course, the banker should satisfy himself that he is making the payment to the person who is entitled to receive it according to the apparent tenor of the instrument.

The effect of the second requisite is that a payment made to a person who is not in possession of the instrument cannot be regarded as a payment in due course. In actual practice, this point does not arise as a banker does not make payment of a cheque unless the same is presented.

As regards the third requisite, we have throughout this book taken for granted that the banks act in good faith and therefore, we need not offer any comment upon the same. The Indian law as stated above will take away a payment made negligently from the category of a payment in due course, but it is not so under the English law. As an illustration of negligence it may be stated that, if the paying bank fails to see, whether or not all the endorsements are regular it will be deprived of the statutory protection. Similarly, in case of *per pro.* endorsement, if the paying banker does not satisfy himself whether a person signing *per pro.* has any authority or not, the payment will not be regarded as a payment in due course.

In the case of crossed cheques Sec. 128 of the Negotiable Instruments Act, 1881, amplifies the protection given to the paying banker by Sec. 85 of that Act. Sec. 128 provides, "Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the

Protection in case  
of crossed cheques.

drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to, and placed in, if the amount of the cheque had been paid to, and received by the true owner thereof." As will be seen from the wording of the section already quoted protection is given also to the drawer of the cheque if it has come into the possession of the payee.

As previously stated\* drafts drawn by one branch of a bank on another are not regarded as cheques although they are exactly analogous to cheques and are handled alike in the course of business. Consequently the protection to the paying banker in the case of drafts was not granted till the Negotiable Instruments (Amendment) Act which received the assent of the Governor-General in Council on 25th July, 1930 was passed. It provides that "where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course."†

Lastly, having satisfied himself on the points stated above, the paying banker must see that the cheque is really an order of his customer since he is only bound to pay his customer's money with his authority. This means that he should make himself sure of two points: (1) whether the cheque purports to bear the signature which the banker has been instructed to honour, which may be that of his customer or of some one else; and (2) whether the signature on the cheque is genuine or not? In the case of joint accounts, in the absence of clear instructions from each of the parties concerned, the banker should safeguard himself by insisting upon the cheque being signed by

Protection for  
drafts drawn by  
one branch of a  
bank on another  
payable to order.

Customer's sig-  
nature.

\* *Vide* page 148.

† Section 85-A.

all the parties. The same rule applies to cheques drawn against a joint account in the names of husband and wife who can operate on it jointly or severally.

As to the first point, no difficulty arises provided the banker follows his customer's instructions, but failure to do so is likely to land him in difficulties. Let us take for instance the case where an account is opened in the name of a firm with instructions that no cheque drawn by one of the partners in the name of the firm should be honoured by the banker unless it bears the initials of the other partner. The banker having honoured a cheque drawn by one partner without being initialled by the other will be liable to the other partner for the amount of the cheque.

For a cheque to be valid it is not always necessary that the drawer should sign it with his own hands. It is sufficient if the customer's signatures are written thereon by another person authorized by him to do so. Nor need a signature appear at the foot of the cheque. It may appear in any part of the cheque provided the intention of ordering the payment is made clear. Mr. Hart is of opinion that the following form is quite in order: "I, John Styles, order you to pay..." But in the absence of an agreement the banker is not bound to honour such cheques, if they do not bear the signatures which he is authorised to honour.

As regards the second point, it should be noted that a banker is bound to know the signature of his customer. The banker is supposed to have specimen signatures of all his customers so that he can compare the signature on the cheque with the specimen supplied to him. Should he come to the conclusion that his drawer's signature on a particular cheque differs from the specimen signature supplied, he should not honour it. In case, however, the signature is forged and he

The cheque should purport to bear the signature the banker is instructed to honour.

The customer and forged signature.

fails to detect the forgery he cannot debit his customer's account with the amount of the cheque, because he has no authority from his customer to part with his funds: *Bhagwan-das v. Creet*.<sup>\*</sup> There are a few exceptions to this general rule. If by his conduct, the customer causes the banker to believe the signature to be genuine, the latter will be entitled to debit the account of the former with the amount of the cheque paid. Thus, supposing a cheque purporting to be drawn by X is presented at his bank when he happens to be in the bank's office and the ledger clerk feeling doubtful about the genuineness of his signature on the cheque shows it to Mr. X and passes it on his assurance that it is genuine. X will thereby be precluded from denying afterwards the genuineness of his signature or disputing the banker's right to debit his account with the amount of the cheque so paid. This is so even if it is doubtful whether negligence on the part of the customer, prior to the presentation of the cheque would preclude his repudiating the instrument on the ground of the forged signature. In order that our readers may obtain some idea of the judicial tendency in such cases we cite two instances on the point:—

(1) In *Lewis Sanitary Laundry Co., Ltd. v. Barclay Bevan & Co.*,<sup>†</sup> the directors of the steam laundry, three in number, had appointed the chairman's son as secretary to the company. They were aware that this son had committed forgery four years previously, although since then he had apparently been living a straight life. Reposing confidence in him, the directors allowed him to keep the cheque-book of the company in custody. The secretary forged the signature of one of the directors on a number of cheques purporting to be drawn on behalf of the company, and obtained payment thereof from the company's bankers. Mr. Justice Kennedy held that the bank could not debit the amount of those forged

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<sup>\*</sup> (1904) I.L.R. 31 Cal. 249.

<sup>†</sup> (1906) 11 Com. Cas. 255.

cheques to the company's account, since there had been no such negligence on the company's part as would preclude its recovering from the bank the amount paid on the said cheques.

(2) In *Kepitigalla Rubber Estates Ltd. v. National Bank of India, Ltd.*,\* the signatures of the two directors of a company were forged by the company's secretary on a number of cheques. Those cheques were paid from the company's account. The said forgeries covered a period of over two months during which the directors had not examined the company's pass book. It was held that the company was entitled to recover the amount of those forged cheques from the bank.

But should a customer come to know of a forgery already committed resulting in his banker's debiting his account, and fail to inform the banker until the latter's chances of recovery from the forger have been materially prejudiced the customer will be precluded from disputing genuineness of the signature and claiming the amount from the bank: *M'Kenzie v. British Linnen Co.*† This has been further elucidated in a recent case *Greenwood v. Martins Bank*.‡ One Mr. Greenwood had an account with a branch of the defendant bank. Somehow his wife acquired his cheque book and forged as many as 44 cheques. On Greenwoods' discovering the fact she appealed to him not to inform the bank as he was certain to get back his money at the end of the litigation for which she had used the money in aid of her sister. Being reluctant "to give his wife away" and taking her upon her word he refrained from informing the bank. Ultimately, however, when the plaintiff's wife asked him for more money, he refused it and threatened her that he was going to report the matter to the bank which led his wife to commit suicide. When he filed a suit against

\* (1909) 2 K.B. 1010.

† (1881) 6 App. Cas. 82.

‡ The Manchester Guardian Commercial, 30th July 1932.



the bank he was relying on a recent decision that a banker is *prima facie* liable to a customer if he pays away the customer's money on a forged cheque. Soon afterwards, however, it was decided that the customer also owes a corresponding duty to the bank to use reasonable care in the drawing of cheques and if he through his negligence facilitates the perpetration of the forgery he may be deprived of his remedy against the bank. On the other hand the bank also cannot rely on the customer's delay in cases where the bank itself has been guilty of negligence which has contributed to the loss. In this case however, the plaintiff was precluded from his claim against the bank because he delayed disclosing his wife's wrongs until by her death the bank had lost all opportunity of proceeding against her. Should the customer learn of the forgery through an accredited agent of the bank, who asks the customer to maintain silence in the banker's interest, and the customer, in the belief that the agent is acting honestly in making this request, complies, he will not be guilty of any negligence. On the other hand if request made by an officer of the bank to the customer was such as would create in the mind of a person of ordinary intelligence a suspicion as to its genuineness, the customer should report the matter forthwith to the directors of the bank: *Ogilvie v. West Australian Mortgage and Agency Corporation*.\*

Forgery of customer's signatures on requisition slips.	As a measure against the possible forgery some of the banks have begun to issue requisition slips duly numbered so as to indicate the name of the customer to whom the cheque book containing the requisition slip was issued.
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If the requisition slip is stolen and the customer's signature forged thereon by an ubiquitous thief and the banker issues a cheque book thus facilitating the thief's drawing cheques against the customer's account the liability of loss thus caused will depend on the decision as to which of the two acted

negligently. If the customer, after having come to know of the loss of the slip had failed to report the matter to his banker for a considerable time or had abetted its being stolen, surely, he will have no right to blame the banker for any negligence. If, however, the forgery was such as could be detected with reasonable care on the part of the banker, the loss will devolve on him.

### **When payment must be refused.**

The duty as well as the authority of the banker to pay cheques drawn upon him is determined : --

(1) *By the countermanding of payment by the customer,*  
 Stopped cheques      i.e., upon receipt of the customer's instructions not to honour the cheque, not only must the customer decide to stop payment of a certain cheque but he must notify his banker of this intention. The banker may postpone honouring a cheque if he receives a telegram purporting to come from his customer instructing him to stop payment of a cheque till it is confirmed by a duly signed letter from the customer. Otherwise the banker is not bound to accept an unauthenticated telegram of this nature. Some banks lay down a bye-law that they would try to stop the payment of the countermanded cheques but according to French Law cheques cannot be legally stopped for any reasons except loss or theft.

(2) *Upon the receipt of a notice of a customer's death.*—  
 Customer's death.      Upon the death of the customer the title to his bank balance passes to his legal representative. If, however, the banker has not been notified of the death of his customer, he may honour a cheque drawn by that customer and debit his account with the amount notwithstanding that payment has actually been made after the death of his customer.

(3) *By a customer's insolvency.*—The banker's right to pay cheques drawn against a customer's account ceases as soon as receiving order has been made against the customer, or after the banker has received notice of an available act of bankruptcy having been committed by the customer.

(4) *Upon the receipt of a notice of the insanity of a customer.*—Should the customer become absolutely insane or of an unsound mind, the banker should not honour his cheques, but payment of a cheque drawn at a time when the customer was capable of acting rationally, is valid.

(5) *By garnishee or other legal order attaching or otherwise dealing with a customer's money in the custody of the banker.*—After receipt of such orders the banker should not honour cheques drawn against the customer's account.

When a banker decides not to honour a cheque he should return it with a slip giving the reason for the dishonour. The banker's remarks on the slips are very brief. The following abbreviations are generally used by them :—

(i) R. D.—“Refer to the Drawer.” It is generally meant to convey to the holder that he should refer to the drawer for payment, that is, the banker has not sufficient funds at his disposal to honour the cheque. In *Sterling v. Barclay's Bank Ltd.*\* for the first time it was held that the letters R. D. (Return to Drawer) constitute a libel involving the dishonouring of a cheque. This decision may enable private persons to claim damages for libel although so far it was not thought that the words ‘return to drawer’ had any defamatory meaning.

\* The Accountant's Journal, September 1930, p. 367.

(ii) N.S.—“ Not sufficient ; ” N. E., “ No effects ” and N.F. “ No Funds ” are other abbreviations used for the same purpose, but the abbreviation, R. D. which is less definite than the last three is generally used.

(iii) E. I.—“ Endorsement irregular : ” when an endorsement on a cheque is not in order as is the case when the spelling of the payee's name given on the face of a cheque differs from that of the endorsement the cheque is returned with this remark.

(iv) E. N. C.—“ Effects not cleared. ” This means that the drawer has paid in cheques or bills which are in course of collection but their proceeds are not available for meeting the cheque.

(v) D. D.—“ Drawer deceased : ” when the banker hears of the death of the customer he should no longer pay cheques drawn by the deceased customer.

(vi) The abbreviation W. & F. D.\* stands for “ words and figures differ.” The general practice is not to use this abbreviation, but to write the same fully.

(vii) D. R. “ Discharge required.”

To avoid any likelihood of the abbreviations being misunderstood generally printed slips with a numbered list of full answers is used, and the banker simply gives the number of the answer he wishes to make.†

### **Banker as payer of domiciled bills.**

In an earlier part of this book we have stated that it is the duty of a banker to honour his customer's cheques provided he has funds available for the purpose. But in the case of the bills accepted by the customer and made payable by his banker, no

No legal obligation to honour bills.

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\* It is preferable to avoid these abbreviations and give the remarks in full.

† See specimen in Appendix A, Form No 20.

such obligation arises. It is, therefore, desirable that there should be an agreement, express or implied, to support the banker's understanding to do this work for a particular customer. It must, however, be added that a banker who has previously honoured his customer's acceptances cannot discontinue to do so without giving due notice to his customer.

Many of the considerations to be borne in mind in connection with the payment of cheques apply equally to the payment of domiciled bills. For example the banker has to see that the bill is in proper form, that it is duly stamped, is due for payment and that the material alterations if any, are confirmed. Moreover, as in the case of cheques, the banker must obtain his customer's authority to part with his funds, and he must see that his customer's authority is obtained by means of genuine acceptance on bills. While in the case of cheques he has to make sure that the drawer's signature is genuine, in the case of bills he must see that the acceptor's signature is not forged. In either case should the signature of his customer turn out to be otherwise than genuine the banker cannot debit his customer's account except in a case where the customer is estopped from denying its genuineness. However, if the drawer's signature on a bill duly accepted by his customer and domiciled with his banker turns out to be forged the latter cannot be called upon to reimburse the loss resulting therefrom, it is no part of the banker's duty to see that the drawer's signatures on such instruments are genuine. Nor is it possible for him to verify the drawer's signature as he may not have had any dealings with him. But even if he has had dealings with the drawer of a bill accepted by his customer, it is the duty of the acceptor and not of his banker to make sure that the signature of the drawer is genuine. Moreover, the banker also runs the risk of paying a bill bearing a forged endorsement. It is clear that the customer wishes the banker to make

payment of the bill to a person entitled to it. In case payment is made to a person who has obtained title through a forged endorsement, the payment thus made by the banker cannot be held to have been made to a person entitled to receive it and therefore the paying banker will not be entitled to debit his customer's account with the amount paid. Nor can he claim the protection given to the paying banker in case of cheques by Sec. 85 of the Negotiable Instruments Act, 1881. It follows, therefore, that the banker should ask his customer to indemnify him in respect of forged indorsements if the former is to honour the latter's acceptances without any additional risk.

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## CHAPTER VII.

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### THE COLLECTING BANKER AND CUSTOMER'S ACCOUNT.

Having considered the position of a banker as payer of his customer's cheques and bills domiciled with him, we propose to examine his position as collector of cheques and bills on behalf of his customers. Of course it need hardly be mentioned that a banker does not confine himself to the performance of this function only. Every banker acts both as a paying as well as a collecting banker.

It may be said that theoretically there is no legal obligation on a banker to collect cheques drawn upon other banks for a customer.

Collection of cheques. However, as we have noticed in the second chapter the collection of cheques and bills on behalf of customers is an important function of almost every modern bank, because it provides a facility which can hardly be dispensed with especially in the case of crossed cheques. Although a large part of this work is carried on through the banker's clearing houses yet it does not affect his legal position as regards the collection of cheques. It is, therefore, necessary that in performing this function the banker should be careful otherwise he may land himself in difficulties.

Before considering the precautions which a banker as a collector of cheques should take it is necessary to distinguish between his position as a holder for value of these instruments and as his customer's agent for collection.

It should be noticed that in the case of uncrossed or open cheques the banker occupies exactly the same position as any other person who so acquires them. If he has paid value for

As holder for value.

an open cheque he can be regarded as a holder for value. In case of a forged endorsement on an open cheque the collecting banker is liable to the true owner but has rights to recover only against the endorsers subsequent to the forgery. Thus if on account of having collected a cheque on which the last but one endorsement is forged. The banker has to refund its amount to the true owner he can only look to the last endorser, that is, his customer for compensating him. However, the loss shall have to be borne by the banker if he cannot find him. According to Sir John Paget\* if there is no forgery of endorsement but the customer has either no title to the cheque or his title is defective, the banker is a holder in due course with good independent title against all the prior parties on the cheque. It should also be remembered that there is nothing to prevent a banker from asserting the same rights with regard to crossed cheques taken by him as holder for value by crediting them as cash or otherwise. The legal position of the collecting banker in the United States of America appears to be far from satisfactory. In *Markovich v. American Exchange Irving Trust Co.*,† it was held that a bank collecting a cheque on a forgery of the payee's endorsement is liable to the payee for the amount of the cheque. The collecting bank was considered to be negligent by the court, because it failed to require identification when the cheque was presented; nor did it ask for a responsible guaranty from the party presenting it as to the genuineness of the payee's endorsement. It relied too much on its depositor's honesty.

A banker while collecting a cheque for a customer cannot assert any right of a holder for value as he is  
 As agent. not one. He has no better title than that of  
 his customer. So if his customer has no title, the collecting

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\* The Law of Banking by Sir John Paget, 3rd Edn., p. 289.

† Municipal Court of the City of New York, 229, New York Supplement 110. The Bankers' Magazine, October 1928.



banker can have none. Thus a banker collecting for his customer a cheque belonging to another person can be sued for conversion, money had and received, if it is proved that he did not act in 'good faith' and 'without negligence' or if the cheque was not crossed before it came into his hands.

Before the statutory protection was given to the collecting banker his position was far from enviable, because as the payment for crossed cheques could not be received at the counter by persons other than bankers he had to be asked by his customers to collect such cheques. In acceding to his customers' requests he had either to run the risk of being held liable to the true owner or to disappoint his customers. Lindley J. speaking of Sec. 12 of the Crossed Cheques Act, 1876, said, "Take the position of a collecting bank. The collecting bank receives from its customers crossed cheques, they must collect them, or leave them alone. They practically do collect them, then it comes to this. What is the consequence if they do collect and the customer who sends the cheque to them happens to have a bad title. It is to my mind a little hard that in any case a banker who collects money for his customer should be liable for the money. I do not mean to say that as the law stood before, the banker was not liable; but it is a little hard and it appeared to me to be only reasonable at all events that the legislature should relieve bankers from some of the consequences which no amount of foresight could possibly prevent, and this by the term of the Sec. 12 is obviously what was meant."\* It will be seen that just as it is not possible for the paying banker to know whether or not the indorsements on a cheque drawn upon him are genuine, similarly it is impossible for a collecting banker to know about the genuineness of the endorsements on the cheque given to him for collection.

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\* The Negotiable Instruments Act by Messrs. K. Bhashyam and K. Y. Adiga, 2nd Edn., p. 480.

Sec. 131 of the Negotiable Instruments Act, 1881, which corresponds to Sec. 82 of the Bills of Exchange Act, 1882, and which governs the protection given to the collecting banker in India runs as follows :

Statutory protection.

“ A banker who has in good faith and without negligence, received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.”

Firstly, it should be noted that the statutory protection given to the collecting banker can be claimed for crossed cheques which term does not include documents purporting to be cheques on which drawers' signatures are forged. The collecting banker can claim no protection in case of open cheques probably on the ground that it is not necessary for the holder to collect them through a banker. It should also be noticed that the protection can be claimed only for cheques crossed before they reach the banker. If the cheque is crossed after it has reached the hands of the collecting banker, he cannot claim protection under Sec. 131 as such a cheque is not regarded as a crossed cheque within the meaning of the words used in the said section. All cheques received by bankers are usually crossed by them with a rubber stamp as a precaution against their being stolen and cashed. When collected by another banker they are treated as crossed but in case of their collection by the banker crossing them statutory protection cannot be claimed. In England, Sec. 95 of the Bills of Exchange Act affords protection to the collecting banker against the true owner in the case of Dividend Warrants which can be crossed effectively. In India also it has been the practice of several Joint Stock Companies to issue their dividend warrants in the form of cheques which does not

Crossed cheques only.

require a dividend warrant to be stamped with 1 anna stamp if its amount is more than Rs. 20. It is open to doubt whether such instruments can be regarded as cheques in cases where the drawee is not a banker. Indian practice, however, bears out the fact that Dividend Warrants can be effectively crossed but whether the protection to the collecting banker in the case of crossed cheques extends to these instruments when crossed will depend upon the answer to the question whether these instruments satisfy all the requirements of the definition of cheque given in an earlier chapter. The protection extends also to cheques crossed with the words "not negotiable." Such a crossing by itself does not deprive the collecting banker of his statutory protection.

Secondly, the protection can be claimed only for those cheques which the banker collects as an agent and not for those collected as principal or in which he acquires personal interest. The distinction between collecting a cheque and holding it for value was originally determined by the fact whether or not the banker paid cash or gave credit to the customer for its amount before collection. In England bankers were generally in the habit of crediting their customers' accounts with the amounts of such cheques as cash even before the receipt of their proceeds but the defect of this practice was brought home to them by the ruling in the case of *Capital and Counties Bank v. Gordon*\* which apart from the question of the banker's liability to the true owner laid down the following proposition† :—

1. That crediting as cash was equivalent to taking the cheque as transferee for value.

2. That it entitled the customer to draw against the cheque at once.

\* (1903) A.C. 240.

† Paget's Law of Banking, 3rd Edn., pp. 321-322.

3. That the banker was nevertheless entitled to debit the customer with the amount, in the event of the cheque being dishonoured, or the banker being made liable to the true owner.

This ruling, prejudicial to the bankers in England as it was, led to the passing of the Bills of Exchange Amendment (Crossed Cheques) Act in 1906. The operative part of this Act is contained in Sec. 1 which runs as follows :—

The Bills of  
Exchange Amend-  
ment Act, 1906.

“ A banker receives payment of a crossed cheque for a customer within the meaning of Sec. 82 of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.”

Thus it will be clear that the position of the collecting banker in England which was weakened by the *Gordon Case* was rehabilitated by the passing of the Amendment Act. However, bankers in India failed to realise the effect of the ruling referred to above. It was only in 1919 that the author of this book drew their attention to it at a public lecture on “ The Banking Needs of India ”\* ; but it failed to awaken them. Thus their position continued to be unsatisfactory till 1922 when through the Indian Merchants' Chamber he approached the Legislative Department of the Government of India which after inviting the opinions of the important Chambers of Commerce and other public bodies passed an Amendment Act on the lines of the English Crossed Cheques Act of 1906. A banker cannot be deemed to act as a mere agent for collection when he does anything which is not consistent with such agency. If he takes the cheque as an independent holder by way of negotiation, he cannot receive payment for a customer because he receives it for himself. For instance, if he gives cash for it at the counter

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\* The Banking Needs of India by M. L. Tannan (1919), p. 11.

he cannot claim the statutory protection by reason of having collected it. However, by merely having stamped his own name across the cheque in the ordinary course of business a banker cannot be said to have dealt with it as an owner.

Thirdly, a bank must collect cheques on behalf of a customer. If a crossed cheque is collected on behalf of a person who is not a customer of the bank, it cannot claim protection under Sec. 131 of the Negotiable Instruments Act, 1881. As to the question what constitutes a customer of a bank it is needless to go over the ground again as it has been thoroughly dealt with in Chapter II.

Lastly, the collecting banker can claim protection only if he receives "payment in good faith and without negligence." If the words "in good faith and without negligence" were to refer to the receipt of money only they would in the words of Sir John Paget be "nugatory, worse than nugatory and a mere trap." However, they refer to all the preliminary operations leading up to the receipt of the payment. The first part of this condition which refers to the good faith does not require any comment as in this book we have presumed that bankers act in good faith. It is, therefore, the second part which refers to negligence that need be considered.

There has been considerable difference of opinion as to what constitutes negligence for the purposes of Sec. 131. In the first place it should be noted that negligence in this section is more or less artificial as there is no contractual relationship between the collecting banker and the true owner of the cheques thus giving rise to a duty on the part of the former. His duty is only to his own customer. However, this duty towards the true owner has been imposed by the statute law in the interests of the general public. Speaking generally, the banker must

exercise the same care and thought in the interests of the true owner of the cheque as a reasonable businessman would do in his own interests. The extent of this duty may be realised by the fact that failure to obtain references or letters of introduction at the time of the opening of a current account in the name of a person whose title to the cheques collected turns out to be defective has been held to amount to negligence sufficient to deprive the collecting banker of the statutory protection: *Ladbroke & Co. v. Todd*.<sup>\*</sup> The above view has been at least questioned in *Commissioners of Taxation v. English, Scottish and Australian Bank, Ltd.*<sup>†</sup> where their lordships after pointing out that the words of the section are "without negligence receives payment" said, "It is not a question of negligence in opening an account, though the circumstances connected with the opening of an account may shed light on the question of whether there was negligence in collecting the cheque." In spite of this remark it is contended that the banker has to be careful in opening a new account if he wishes to claim statutory protection under Sec. 131 for cheques collected for the benefit of that account.

Some phases of the duty of the collecting banker to the true owner as established by legal decisions are given below and these will help the reader to get an idea of the precautions which a collecting banker has to take so as to avoid being deprived of the statutory protection under Sec. 131 on the ground of negligence.

In the first place, it is to be remembered that it is the duty of a collecting banker to verify endorsements on an order cheque. If a banker collects an order cheque with one or more irregular endorsements he is held to be guilty of negligence. In *Bavins Junior and Sims v. London and South Western Bank*

<sup>\*</sup> (1914) 33 T.L.R. 433.

<sup>†</sup> (1920) A.C. 683.

*Ltd.*,\* the Court of Appeal held that the collecting banker was guilty of negligence on the ground that he failed to detect the discrepancy between the name of the payee and the endorsement on the cheque.

In the case of a "per pro." endorsement it has been held that the collecting banker is put on inquiry which also shows that he must examine the endorsements: *Bissel & Co. v. Fox Brothers & Co.*† The recent ruling on the point seems to be slightly favourable to bankers. In *Crumplin v. The London Joint Stock Bank*,‡ the late Lord Sterndale, then Mr. Justice Pickford held that the words "per pro." on a cheque did not put the bank upon inquiry and the fact that the bank did not make inquiries was no complete evidence of the negligence on the part of the bank. Similarly it is no part of the duty of the collecting banker to see that the conditions, if any, to which the authority to sign was subject have been fulfilled. However, it must be stated that in the words of Bernard Campion K. C. "per pro." for the purpose of Sec. 131 is an element not to be disregarded as, "the procuration signature at once shows you that the position of the person is professedly and completely a procuration position §."

If a crossed cheque payable to a company is sent to a banker for collection for the credit of the private account of the general manager of the company the collecting banker, if he wishes to claim protection under Sec. 131 should not collect it without satisfying himself that the person on whose behalf the cheque is to be collected is duly authorized to receive

\* (1900) Q.B. 270.

† (1885) 53 L.T.N.S. 663.

‡ (1913) 30 Times L.R. p. 99.

§ Journal of the Institute of Bankers, May 1925, p. 235.

its payment.\* On the same principle it amounts to negligence if a banker collects a cheque payable to a firm for the benefit of a partner's account. Another illustration of this principle is the case of cheques payable to officials and their collection for the benefit of their private or personal accounts without satisfactory explanation. In *Ross v. London County & Westminster Bank*,† a case where cheques payable to the order of an officer in charge of one of the departments of the Paymaster-General of the Canadian Overseas Forces in his official capacity were stolen by a clerk on whose behalf they were collected by a bank, the collecting bank having been sued the question arose as to whether or not the cheques put the bank on enquiry, and it was answered in the affirmative. In *The Midland Bank Ltd. v. Reckitt and others*‡, Lord Terrington who had a power of attorney authorising him to draw cheques on the banking account of his client, one Reckitt, at Barclay's Bank for Reckitt's purposes, drew certain cheques and paid them into his own account at the Midland Bank. Because Lord Terrington was signing as attorney of Harold G. Reckitt, the Midland Bank had ample evidence that Terrington was not signing the cheques on his own behalf. Still they failed to make any enquiries as to his authority to pay the cheques into his own account. This led to the House of Lords's decision that by making no enquiries the bank was guilty of negligence and so lost the protection afforded to it by Sec. 52 of the Bills of Exchange Act, 1882, under which a banker who receives payment of a crossed cheque, for a customer 'in good faith and without negligence' is protected.

As another instance of negligence on the part of a collecting banker it may be mentioned that in a recent case

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\* *A. L. Underwood Ltd. v. Bank of Liverpool & Martins*, The Times, January 31, 1924.

† (1919) 1 K.B. 678.

‡ The Manchester Guardian Commercial, 30th July, 1932.



*Savory & Co. v. Lloyds Bank* it was held in effect that a collecting banker's failure to make enquiries before taking a bearer cheque drawn by a firm in favour of a third party and paid in by a person known to be an employee of the drawing firm, constitutes negligence on the part of the banker. This decision of the House of Lords has placed the collecting banker in a very disadvantageous position. No doubt, when the cheque is paid in at the branch where the person paying in keeps his account the bank can easily satisfy the requirement of the ruling. But when the cheque is paid in at one branch to be credited to an account kept at another the application of the rule becomes a more difficult matter. The ruling also applies to cases where the person paying in is the wife of an employee of the firm.

The question as to whether the collecting banker should take into consideration the state of the customer's account is not quite free from doubt. In *Commissioners of Taxation v. English, Scottish and Australian Bank Limited*\* an account was opened with £ 20 and the next day a cheque for £ 735-18-3 payable to bearer was paid in for credit of the customer's account. The Privy Council saw nothing in this to excite suspicion or possible enquiry.

Having dealt with the position of the collecting banker in relation to the true owner of the cheque we shall now consider the question of the liability of the collecting banker to his customer. As his customer's agent, the collecting banker is bound to show due diligence in the collection of cheques given to him. If he fails in this duty and his customer suffers a loss, the collecting banker will be required to make good that loss. For instance, if a banker to whom cheques have been given for collection fails to present them within a reasonable time by

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\* (1920) A.C. 683.

which term is meant at the latest the next working day after receipt of the cheque by the collecting banker, and the banker on whom they are drawn fails, his customer will hold the collecting banker liable for the loss which he may suffer if the failed bank does not pay the full amount to its creditors. Similarly, the collecting banker should show due diligence in informing his customer about the dishonoured cheque, so as to enable him to recover the amount from the parties liable on the same. Generally bankers present the cheques to be collected on the same day on which they are received or on the following working day if the two bankers, the collecting and paying, are in the same city. If they are in two different cities the collecting banker should send the cheques to his agent in the town where the particular branch of the drawee bank is, either on the same day on which he receives them or on the following working day. The same rule applies to the notice of dishonour. Such a notice may be given by a personal communication such as by telephone although it is preferable to give it in writing. Notice by telegram would seem to be good, but it must be confirmed by a letter.

### **Collection of Customers' Bills.**

Although, strictly speaking, bankers are not legally bound to collect bills for customers, no commercial bank in modern times can afford to refuse to render this service. This work is taken up by a banker not only for the convenience of his clients, but also because it adds to his own profits as he generally makes a charge for the collection of bills. Moreover, by offering this facility, a banker is likely to attract some new accounts as generally if an acceptor of a bill finds that a good many of his acceptances are lodged for collection with a particular bank he may regard it more convenient to open an account with that bank and make payments of his bills by cheques drawn upon the same bank or by mere transfers in its books.

No legal obligation to collect bills.

In collecting bills a banker has to satisfy himself that the title of the person for whom he collects them is not defective as the statutory protection afforded to the collecting bankers by Sec. 131 of the Negotiable Instruments Act does not extend to bills. Thus it will be noticed that in case the title of the banker's client to a bill collected for him by the banker turns out to be defective, as would be the case if an endorsement on the bill happens to be a forged one, the true owner can claim the amount of the bill from the banker, who in turn can look to his customer.

Precautions to be taken.

In case the bill is not already accepted the banker has to present it for acceptance. Sec. 61 of the Negotiable Instruments Act, 1881, which governs the presentment for acceptance runs as follows:—

Presentment for acceptance.

Sec. 61. "A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default."

"If the drawee cannot after reasonable search, be found, the bill is dishonoured."

"If the bill is directed to the drawee at a particular place it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured."

"Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient."

Without the consent of his customer a banker must not commit the blunder of either agreeing to take a qualified acceptance or taking the drawee's cheque and giving the bill to him as it would release the drawer and the endorser of the bill.

Presentment for acceptance when excused.

Presentment for acceptance is excused in the following cases :—

- (a) Where the bill is payable on demand.
- (b) Where the drawee is either a fictitious person, dead, insane, or bankrupt, or a person having no capacity to enter into contracts by bills.
- (c) Where in spite of reasonable diligence on the part of the banker the presentment cannot be effected.
- (d) Where although the presentment is not quite regular the drawee has refused to accept it on some other ground.

Whether the banker holds an unaccepted bill as a holder for value or on behalf of his customer, it is very desirable that the same should be presented for acceptance as early as possible, firstly, because on the acceptance of a bill an additional security is given to the banker inasmuch as the drawee until he accepts a bill is not at all liable on the same. Secondly, the banker is expected to act in a manner most beneficial to his customer's interests. Thirdly, in case the bill is payable after the expiry of a certain period after sight, presentment for acceptance is necessary in order to fix the due date of the bill and the sooner it is presented and accepted, the earlier will it mature. It is, therefore, the banker's duty to exercise care and promptness in presenting the bill for acceptance. In case the banker fails in this duty and thereby the customer suffers loss the banker will be held liable to his

Advantages of presentment for acceptance at an early date.

customer. As to the period during which the bill after its receipt should be presented for acceptance it should be noted that generally a bill is presented for acceptance either on the same day on which it is received or on the following working day if the place at which it is to be presented is within the area of the banker's call. Otherwise the banker sends it to his agent in the city given in the address of the drawee. If the banker has no agent at the place, the bill may be sent to the drawee by registered post. However, in determining what is a reasonable time for presentment for acceptance, Sec. 105 of the Negotiable Instruments Act, 1881, requires that regard should be had to the nature of the bill, the usage of the trade, and the facts of the particular case. In exceptional circumstances when presentment cannot be made within a reasonable time, the banker should inform his client or correspondent from whom the bill is received.

It is not necessary that the acceptance must be on the face of the bill although generally it is put there. However, the acceptance as is the case with an endorsement should not be proceeded or followed by a courtesy or other title and particularly in case of bills payable after sight the date of the presentment for acceptance should also be added to the acceptance. In case of the dishonour of a bill by non-acceptance it is the duty of the banker to return it to the customer. In case of foreign bills the banker should have them protested or noted and a formal protest sent afterwards.\*

We shall now consider the duty of the banker with regard to the presentment of bills for payment.

Presentment for payment. Sec. 64 of the Negotiable Instruments Act, 1881, lays down :—

“Promissory notes, bills of exchange and cheques must be presented for payment to the maker acceptor or drawee thereof

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\* For a specimen of Protest see Appendix A, Form 3.

respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment the other parties thereto are not liable thereon to such holder."

"Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient."

*Exception.*—"Where a promissory note is payable on demand and is not payable at a specified place no presentment is necessary in order to charge the maker thereof."

Presentment for payment is not generally necessary to charge the maker or acceptor on the ground that he is the principal debtor. Failure to present the bill to him may affect costs of the suit if the defendant on the suit being filed pays the amount in Court. As far as the other parties liable on the bill are concerned presentment for payment of bills is necessary except in the case of Hundis and other instruments in oriental languages which are governed in this respect by local usages.

Presentment for payment should be made by the holder or his authorised agent during the usual business hours on a working day at the drawee's place of business, if known, otherwise at his residence. In case of bills having two or more drawees not in partnership presentment must be made to all of them. When the drawee is dead presentment should be made to his personal representative if he can be found. As in the case of presentment for acceptance presentment for payment should be made within a reasonable time after the bill has matured.

Presentment not necessary to charge the maker or acceptor.

When and where should presentment be made ?

In the absence of instructions from their customers on the dishonour of inland bills collecting  
 Noting and pro- bankers do not generally get them noted, but  
 testing. when a foreign bill is dishonoured the  
 banker must have it protested unless he has been asked by his  
 customer not to do so.

Generally when a bill is dishonoured by non-payment the  
 banker when he is acting as his customer's  
 Notice of dis- agent should return the bill to him. In  
 honour. case the banker has discounted the bill and  
 allowed his customer to draw its proceeds he should give notice  
 of dishonour to one or more of the parties liable on the bill if  
 he is not sure of recovering the amount from his customer.  
 However, if the customer is good enough for the amount the  
 banker should return the bill to him and ask him to pay the  
 amount of the bill plus interest and other charges. It is not  
 necessary that the notice should be in writing, but verbal  
 notices in such cases should not be depended upon as in the  
 event of the other party denying its receipt proof will have to  
 be given in support of it. When a bill is returned it serves  
 as a notice, but it is desirable that a separate notice\* should  
 be sent along with it. The banker should see that the notice  
 is properly addressed and posted.

### PASS-BOOK.

At this stage of our discussion of the subject it is desirable  
 to consider the position of the pass-book  
 Its form. with regard to the banker and his customer.  
 This is a book in which the banker keeps a record of his  
 customer's account for the latter's use, and is so called because  
 it passes periodically between the banker and his customer.  
 Formerly it contained a copy of the customer's ledger account  
 as it appeared in the banker's books and was headed thus :

*K. P. BASU Esquire,*

In a/c with

The A. B. Bank, Ltd.,

Dalhousie Square, Calcutta.

Dr.

Cr.

Date	Particulars.	Rs.	A.	P.	Date	Particulars.	Rs.	A.	P.
1932 Jan. 1 ...	To Subscription for membership of the Orient Club.				1932 Jan. 1 ...	By Balance b/d...	2550	12	11
		10	0	0	.. 3 ...	By Cash ...	375	2	6
.. 2 ...	To P. K. Batliboi. (Cheque No. F 990705) G	2570	3	6	.. 6 ...	By Bill collected	3010	0	0
.. 3 ...	To cost of 50 Madan Theatres Shares purchas- ed.	100			.. 10 ...	By cheques ...	1055	8	1

The above form represents the customers' a/c as kept in the books of the bank and accordingly the items of receipts by the bank appear on the credit side and those of payments on the debit side of the account. However, now-a-days the pass-books used by most of the banks contain entries as would be made by the customer in his books. In other words, it is a copy of the banker's account in his customer's books: and is headed as follows:—

A. B. Bank Ltd. in a/c with

*K. P. BASU Esquire,*

and the debit and credit items appear on the right and left sides respectively, *i.e.*, just the reverse of the form in which they are given above. This facilitates the customer's understanding the state of his account.

Introduction of loose-leaf ledgers and the use of accounting machines have recently led some banks in western



countries to send statements of accounts to their customers daily or periodically as agreed upon.

Sir John Paget speaking of the pass-book says,\* "Its proper function is to constitute a conclusive and unquestionable record of the transactions between banker and customer and it should be recognized as such." In support of this view he cites *Devaynes v. Noble*† in which the Court of Chancery ordered an inquiry into the nature and effect of the pass-book. The report to which reference at length is made in the judgment says that on delivery of the pass-book to the customer he "examines it, and if there appears any error or omission, brings or sends it back to be rectified; or if not, his silence is regarded as an admission that the entries are correct." However, in view of several decisions on the subject the legal position in England as well as in India is far from what is stated above.

In *Keptigalla Rubber Estates Co. v. National Bank of India*‡ Mr. Justice Bray said that he knew of no authority in England for the proposition that, when a pass-book is taken out of the bank by the customer or some clerk of his and returned without objection, the account between the bank and his customer is regarded as settled by which both are bound. He added (p. 1029), "Apart from authority, one has only to look at the facts of this case to see how absurd it would be to hold that the taking out of the pass-book and its return constituted a settled account."

Duty of customer to examine his pass-book recognised in U. S. A.	In the United States of America the point has been judicially settled in a way favourable to the banker. The presiding Judge while delivering judgment in <i>Morgan v. United States Mortgage and Trust Co.</i> § said, "The
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\* The Law of Banking, 4th Edn., p. 294.

† (1816) 1 Meriavale 530, 535.

‡ (1909) 2 K.B. 1010.

§ (1913) 208 New York Rep. 218.

depositor who sends his pass-book to be written up and receives it back with his paid cheques as vouchers is bound to examine the pass-book and vouchers and to report to the bank without unreasonable delay any errors which may be discovered." As to the negligence he said, "Negligence in this case means the neglect to do those things dictated by ordinary business customs and prudence and fair dealing towards the bank which, if done, would have prevented the wrong doing which resulted from the omission."

Effect of entries in the pass-book.	In order to understand the position clearly we propose to consider the effects of entries made by mistake in the pass-book to the credit of the customer and of the banker respectively.
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Entries favourable to customer.	As the entries in the pass-book are made by the banker or his agent, the pass-book record can be used as evidence against the banker, but this applies only to those entries which are unfavourable to the banker. In <i>Akrokerri (Atlantic) Mines Ltd. v. Economic Bank</i> ,* it was held that, "The pass-book .....belongs to the customer and the entries made in it by the bank are statements on which the customer is entitled to act." But the banker may show that a certain entry was made erroneously, provided that the customer, relying upon the accuracy of the record, has not been adversely affected through the error, <i>e.g.</i> , when an uncleared cheque is entered in the pass-book as cash, the banker can show the real nature of the entry. If the banker has erroneously shown a larger credit balance in the pass-book than is actually due to the customer who, relying upon the accuracy of the pass-book record, draws a cheque accordingly, the banker has no right to dishonour such a cheque. If he does so he may be held liable to pay damages for the wrongful dishonour of his
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\* (1904) 2 K.B. 465.

customer's cheque.\* In determining the question of fact, a great deal depends upon whether the customer was led through the erroneous entry to act in a manner in which he would otherwise not have acted.

It has been held† that a fictitious entry made by a bank employee cannot be relied upon by a customer who has not received notice of the same or acted so as to alter his position.

As regards the effect of entries made in the pass-book to the credit of the banker, it is not possible to define with full confidence the extent to which the customer is bound by them, but recent rulings enable us to make the following general observations :—

Entries favourable to banker.

Where the customer has so acted as to render the entries a settled or stated account, and is guilty of negligence in regard to them and as a result the banker's position is affected in a manner disadvantageous to him, probably the customer will not be allowed to dispute the accuracy of the entries. It is still doubtful what acts or omissions on the part of the customer are tantamount to settlement of account or to negligence in regard thereto. But it is certain that the receipt of the pass-book by the customer showing the balance of his account with or without the cheques honoured, and the return of the pass-book to the bank by him without taking exception to the entry under dispute, does not constitute such negligence as will preclude his disputing the same. In other words, the customer is not bound to examine the entries in his pass-book and the banker upon receipt of the pass-book returned by his customer without objection from time to time, is not entitled to infer that the latter has accepted the entries as correct : *Chatterton v. London and County Bank*.‡

\* *Holland v. Manchester and Liverpool District Banking Co., Ltd.*, (1909) 25 T.L.R. 386.

† (1927) *British and North European Bank v. Labenstein*.

‡ (1891) *Times* (London) 21st January.

As against a number of decisions on this point unfavourable to the banker the following passage from the judgment given by the majority in the Court of appeal in the case of *Vagliano Bros. v. Bank of England* \* is well worth noting :

“ There is another point to be considered. The plaintiff from time to time received from the bank his pass-book, with entries debiting the payments made, for which the bank sent the bills as vouchers, which were retained by the plaintiff when he returned, without objection, the pass-book. It was contended that this was a settlement of account between him and the bank, and that he had been guilty of such negligence with respect to the examination of the vouchers as would have prevented him from being relieved from the settlement of account. But there was no evidence to show what, as between a customer and his banker, is the implied contract as to the settlement of account by such a dealing with the pass-book, or that, having regard to the ordinary course of dealing between a banker and his customers, the plaintiff had done anything which can be considered a neglect of his duty to the bank or negligence on his part.”

This passage shows that if the bankers operate to formulate a custom, the Courts may give legal recognition to the same. When the case cited above went before the House of Lords, Lord Halsbury was in favour of the bankers and said, “ The false documents were paid, duly debited to the customer, and duly entered in his pass-book, and, so far, as the banker could know or conjecture, brought to his knowledge on every occasion upon which the payment was made and the bills were returned.” Again he says, “ Was not the customer bound to know the contents of his own pass-book ?”

In no case is a banker justified in withholding from his customer any amount received for his credit but omitted to be shown in his pass-book on the plea of acquiescence on the part of the customer.

**Closing an account.**

Determining  
factors.

The following are the circumstances which necessitate a banker's closing the account of his customer:—

1. Notice given by the customer to the banker of his intention to close the account.
2. Death of the customer.
3. Notice of the customer's insanity given to the banker.
4. Notice received by the banker of the filing of bankruptcy petition against the customer, or in the case of a company, of the passing of the winding-up order.
5. Order of the Court, *e.g.*, a Garnishee Order.
6. Notice received by the banker of an assignment made by the customer of his credit balance.
7. The bankruptcy of the customer or liquidation of the banking firm or company.

Just as a customer has the right to discontinue his dealings and close his account with a particular banker, the latter also has the right to say whether or not he would like to continue to have a particular person as his customer. A customer may close his account (1) if he is not agreeable to the terms such as rate of interest and the bank charges, (2) if he cannot get such facilities as are offered to him by some other banker or (3) when his confidence in the bank is shaken. The bank may be unwilling to continue to act as banker to a particular person either because it finds that the person is no longer a desirable customer as he is convicted of forging cheques or bills or he is in the habit of drawing cheques without providing the necessary funds for meeting them or because his account is not a paying one.\*

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\* For a short method of the analysis of depositors' account, used by the Federal Reserve Bank of New York, see Appendix C.

Although a customer is generally not bound to give any special notice of his intention to close his account with a particular bank the latter cannot do so without giving an adequate notice to the former. The bank should honour cheques drawn before the receipt of the notice by the customer if they satisfy the conditions stated in an earlier part of this chapter. As to what is an adequate notice depends upon the circumstances of each case such as the nature of the business, etc.: *Prosperity Ltd. v. Lloyds Bank Ltd.*\* The facts of the case were as follows:— Soon after the formation of the plaintiff company the manager of the defendant Bank at the Victoria Street Branch was approached with a view to the opening of a banking account. The "snowball" scheme of insurance was explained to him in detail, and, on behalf of the defendants, he agreed to open an account there and to receive applications from subscribers to the plaintiff company and to allocate the moneys received from them in accordance with the rules of the plaintiff company. On February 14, 1923, a letter was sent by the head manager of the defendants to the plaintiffs telling them

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\* (1923) 39 T.L.R. 372.

† "On payment of £1. 15s. a subscriber to the scheme would receive a book containing ten application forms, valid for one year. Each new subscriber obtained by the 1st subscriber would fill up one of the application forms and go through the same process. The first subscriber would thus create a 'family' of subscribers, termed 'descendants.' The maximum number (in theory) of 'descendants' from the 1st subscriber would be 10,000,000 and each 'descendant' would be a subscriber introduced by the first subscriber, with the result that the 1st subscriber would be credited with 2s. commission in respect of every one of his "descendants" and each of the members of the "family" would himself become the originator of a similar family. When the sum of £8 consisting of these commissions was placed to the subscriber's credit, that amount would be paid to the insurance company associated with the plaintiff company as the single premium for a ten years' endowment assurance of £10 in favour of the subscriber, and the next £8 would secure a second £10 policy and so on, but of the 35s. paid by a subscriber, 16s. would be credited to him towards payment of the policy premiums, 14s. would be applied in paying the 2s. commissions, and 5s. would be paid to the plaintiff company for expenses and profit."

that the defendants would cease to act as bankers to the plaintiffs after March 14. At the time of going to Court by the plaintiff there was a sum of about £ 7,000 deposited to their credit. Justice McCardie, who gave the judgment had no doubt that the manager of the defendant bank was fully aware of every detail of the scheme and that he agreed to open the account with a full knowledge of its documents and of the course of dealing and business to be followed by the plaintiff company. The scheme was launched after the opening of the bank account. At the time when the defendants proposed to close the account, there were scattered in various parts of the world, a number of application forms and pamphlets and rules of the company, and those rules provided, with the knowledge of Lloyds Bank, that the moneys payable under the scheme, *i.e.*, the 35s. of each subscriber should be paid into the Lloyds Bank. As the bank was to keep the moneys in a certain way, upon certain accounts and to deal with them in a specified manner, it made itself a prominent and important essential of the scheme. Having regard to the knowledge and approval in the first place of Lloyds Bank of this scheme and having regard to their knowledge as to the far extent to which the credit balance of the company was interwoven with the 'snowball' scheme the bank's notice to close the plaintiffs' account amounted to a repudiation of the contract. In the Court's opinion a month's notice by the defendants to discontinue the account was not, in the circumstances of the case, sufficient.

Normally, if an account is closed by a banker upon receipt of a notice regarding the death of a customer, the duly appointed legal representative of the latter is the proper person to whom the credit balance should be paid. No one else has any claim against the banker in respect thereof, unless it can be shown that the balance represents trust money to which the claimant is entitled or that in the

Right to the credit balance in case of customer's death.

matter of that account the customer was really an agent of his principal, the claimant. With a view to make the position clear we give below some cases:—

1. The plaintiff, who had been the farm bailiff of Lord De L'Isle, after his employment in that capacity had ceased or been modified, received a cheque for £ 180 in payment for wheat which he had sold on account of his employer while acting as bailiff. Lord De L'Isle wrote instructing the banker to hold the balance of £ 128 for his own account. It was held that the plaintiff could recover the sum and that Lord De L'Isle had no claim: *Tassel v. Cooper*.\*

2 In the case of *Societe Coloniale Anversoise v. London and Brazilian Bank*,† the plaintiffs had provided moneys for working their mines in Brazil by remittances sent to the London and Brazilian Bank, the defendants, for the plaintiff's account, upon which a person whom the bank knew to be their agent was to draw for agency purposes. Plaintiffs dissolved that agency and requested the bank to handover the balance standing to the credit of their account to another of their agents. The bank refused and plaintiffs claimed the amount. Judgment was given in plaintiffs' favour.

The banker should demand production of the probate or letters of administration which will specify the person to whom he can safely pay the balance of the deceased customer in his hands. By paying the balance standing to the credit of the deceased customer to one of the several executors or administrators, the banker is discharged.

A set-off must be in the form of a cross-claim for a liquidated amount and it can be pleaded only in respect of a liquidated claim. Both the claim and the set-off must be mutual debts due from and to the

\* (1850) 9 C.B. 509.

† (1911) 2 K.B. 1024.



same parties under the same right. A claim by a person in a representative capacity cannot be set off against a personal claim, e.g., A claims Rs. 500 as the balance due to him from his banker, but as trustee of B, A owes to the banker Rs. 300. Here no set-off can be claimed by the banker. Even a claim against the estate of a deceased customer cannot be set off against a debt which was due to the customer from his banker during the former's life-time. Whether the accounts are with one or more offices of the banker it does not affect the position in any way.

### **Recovery of Money paid by Mistake.**

Before closing this chapter it will not be out of place to consider the question of money paid by mistake. It may be stated at the outset that the law with regard to it can hardly be said to be in a settled or a well-defined condition. If a banker sometimes makes a payment by mistake he naturally desires to rectify the mistake and recover the amount if possible. As to what circumstances preclude the right of recovery does not seem to be clear as far as the judgments given in decided cases go. However, certain general principles which determine whether or not money paid by mistake is recoverable are given below :—

Firstly, it should be noted that if a person receiving payment is aware of the fact that he is not entitled to the same the banker's right to claim the amount from him is indisputable. On the other hand, if the person receiving the money acts *bona fide* and the banker does not come to know of the mistake until the recipient's position is altered the banker will not be entitled to recover.

Secondly, the mistake under which the money has been paid must be one of fact and not of general law, so as to entitle the banker to recover the same. For instance, if money due to Kishori Lal has been paid to Prag Nath the mistake underlying

Money received  
*malà fide* recover-  
able.

Mistake to be of  
fact.

the payment is one of fact and therefore the amount is recoverable. On the other hand, if a person happens to pay a debt in ignorance of the law of limitation, the money thus paid cannot be recovered. In *Holt v. Markham*,\* 1923, where Messrs. Holt & Co., the Army Agents overpaid £ 744 into defendant's account owing to a misapprehension regarding certain war office orders it was held that the payment was not made owing to a mistake of fact. However, according to later decisions the mistake seems to be regarded as one of real fact. When there is a mistake of fact and law, according to Wright J.† the money is not recoverable unless it can be proved that it was the mistake of fact which led the plaintiff to make the payment. However, the tendency seems to be towards a liberal view that a mistake of fact is such as almost includes a mixed question of fact and law.

Thirdly, the mistake must be between the party paying and the party receiving money. Thus when the mistake lies between the banker and his customer, *i.e.*, the drawer of the cheque, the banker cannot recover money paid by mistake to an innocent holder. For instance, if a banker by misreading the balance at the credit of his customer's account pays a cheque and afterwards discovers the mistake, the banker cannot recover the money from the recipient even if the mistake is discovered immediately after the money is handed and before the recipient has left the premises.

Exceptions.

No recovery of money paid by mistake is permitted in the following cases :—

1. When it is paid on a negotiable instrument.
2. When the money was paid to, and received by the payee not as a principal but as an agent and the agent had

\* *Home and Colonial Insurance Co. v. London Guarantee & Acc. Co.*, 34 Com. Cases, 163.

† *Home and Colonial Insurance Co. v. London Guarantee and Acc. Co.*, 34 Com. Cases, 163.

paid the money over to the principal or otherwise materially prejudiced his position by relying on the payment before he received notice of the mistake.

As far as the first point is concerned the judgment in *Cocks v. Masterman*\* enunciated the principle that the holder of a bill is entitled to know on the day on which it becomes due, whether it will be honoured or dishonoured and that if he receives the money and is allowed to keep it during the whole of that day the party who paid it cannot recover it. In *London and River Plate Bank v. Bank of Liverpool*† Mathew J. expressed the view that money paid on a negotiable instrument to an innocent holder could not be recovered if he had kept the money for such a period that his financial position might be affected in case he is required to refund the same. The principle underlying the decision was the right of the holder of bill to know definitely the fate of the bill when due. The money was held to be not recoverable in spite of the fact that there was no evidence of negligence on the part of the plaintiffs. As against this view the Privy Council in *Imperial Bank of Canada v. Bank of Hamilton*‡ held that the money paid under mistake for a cheque was recoverable although the notice was given to the defendant bank on the following day. The chief ground on which this decision was based was that the defendant bank was not in any way prejudiced in the recovery of money from its customer by the delay made in sending the notice. However it appears that the principle underlying the decision in *Cocks v. Masterman* is sound and therefore it has been upheld in later decisions on the point.

In *Raghunath Rithkaran v. The Imperial Bank of India*,§ the plaintiffs who had by mistake accepted a hundi which was

\* (1829) 9 B. & C. 902.

† (1903) A.C. 49.

‡ (1896) 1 Q.B. 7.

§ (1925) 27 B.L.R. 1229.

not drawn upon them and had in the usual course paid the amount to the defendant, on discovering the mistake about a year later claimed the amount from the bank. The Bombay High Court while upholding the judgment of the Chief Judge of the Small Causes Court observed that the fact that the plaintiffs accepted the position as drawees of the hundi, established for the time being mutual relationship between themselves and the bank which cast upon them the duty to inform the bank within a reasonable time that they had accepted that position under a mistake of fact.

It should be noted that this exception to the general rule regarding the recovery of money paid by mistake does not extend to cases where either the instrument does not possess the characteristic of negotiability or where the material element supposed to be genuine turns out to be a forged one. Thus the existence of a forged signature whether of the drawer or endorser on a bill or cheque is a mistake of fact between the person paying the money and the person who presents the instrument and receives payment. Thus if the drawer's signature on a cheque turns out to be forged and if there be no endorsement such an instrument cannot be regarded as a negotiable one. However, a document which is originally a sham as would be the case with a cheque bearing forgery of the drawer's signature can become a negotiable instrument at any rate by estoppel when a person can acquire some right in it. For instance, if the cheque referred to above is transferred by the payee to a third person the latter can treat it as a negotiable instrument as far as the former is concerned and therefore the right to recover will not apply to such an instrument. However, in case where the instrument is a mere sham it may be asked whether there is any exception to the rule where the payment is made by the banker relying upon his customer's signature. The practical utility of this question is doubtful as either generally such

instruments bear some endorsement or if the payment is made to the fraudulent party who would not, even if found, be worth the banker's while to proceed against. Although as between a banker and his customer the former is bound to know the signature of the latter it does not mean that the paying banker owes any such duty to the holder of a cheque. However, in cases of gross carelessness on the part of the banker as between him and the person who has received the payment thereby it would be unfair to allow the banker to recover the money paid by him. For instance, if there is a glaring dissimilarity between the signature on the cheque and the specimen signature supplied to the banker the banker's failure to compare the two signatures is considered a departure from ordinary practice and therefore he cannot be allowed to recover the amount received by an innocent person.

The other exception to the rule regarding the recovery of the money is fairly simple. If the money has been innocently received by an agent who had before notice of the mistake paid it over to his principal or otherwise materially and irrevocably altered his position the recovery from the agent cannot be allowed.

The first question to be considered in such cases is whether the money has been received as an agent or principal. The mere fact that by a payment of money into a bank for the credit of a certain customer the bank had undertaken to honour that customer's cheque is not held to be a valid defence to a claim for recovery by the party who had paid the money to the bank by mistake. In *Kleinwort v. Dunlop Rubber Co.*\* one Mr. Brandt served Dunlop Rubber Co., with a notice that Mr. Kramrisch had assigned to him £ 3,000 which the Dunlop Rubber Company

owed to Kramrisch who also directed the Dunlop Rubber Co. to pay the money to Mr. Brandt. The company had a previous general order from Kramrisch to pay money due to him to Kleinworts who were financing him in various transactions. The company through the mistake of one of their officers acting on the general instructions of Kramrisch paid the amount of £ 3,000 by cheque to Kleinworts. Brandt filed a suit against the company for the assigned debt and obtained judgment in his favour. Thereafter Dunlop brought a suit against Kleinworts for £ 3,000 paid to them by mistake of fact. One of the most important points at issue in the case was whether Kleinworts had received the money as agents for Kramrisch or as principals. The Court held that in receiving money Kleinworts had acted as principals and therefore they were liable to repay. The following remarks of Lord Atkinson who reviewed the previous decisions on the point make the position quite clear :—

“ Whatever may in fact be the position of the defendant in an action brought to recover money paid to him in mistake of fact, he will be liable to refund it if it be established that he dealt as a principal with the person who paid it to him. Whether he will be liable if he dealt as an agent with such a person will depend on this, whether, before the mistake was discovered, he paid over the money he received to the principal or settled such account with the principal as amounts to payment, or did something which so prejudiced his position that it would be inequitable to require him to refund. ”

It is quite clear from the extract given above that if the defendants had received the money as agents and had done something to prejudice their position, the judgment would not have been given against them.

It must also be noted that a banker to whom money is paid by mistake cannot set up a lien or claim a set-off which he can otherwise do against his own customer, even where the money is paid to the banker as an agent for that customer. Lien can only extend to the customer's money or securities but not to the money which is paid by a mistake of fact by a third person as it belongs to him and not to the customer.

No lien or claim for a set-off when money is paid by mistake by a third person.

## CHAPTER VIII.

### EMPLOYMENT OF FUNDS.

We have so far confined our attention mainly to such functions of the banker as enable him to obtain funds. We shall therefore now proceed to consider principles of law and practice pertaining to the employment of his funds.

Before dealing with the different forms in which the banker's funds are employed profitably it will not be out of place to consider the purposes for which banks keep their reserves and the considerations governing the size of these reserves.

From the preceding chapters it must have been clear that the liabilities of a banker in India are largely in the form of deposits payable after the expiry of a fixed period and those payable on demand. In addition to the funds required for meeting these demands bankers have to keep funds for meeting the requirements of their customers who may want accommodation either in one form or another. It is therefore necessary for a banker to keep both in his own vaults as well as with his bank—generally the central bank of the country—such amounts as he may consider sufficient for his day-to-day requirements. These funds are known as Cash Reserve and are regarded as his first line of

Reserve.



defence in time of trouble. The following table shows the bankers' balances with the Imperial Bank of India (In lakhs):—

Date.	Exchange Banks.	Indian Joint Stock Banks.
31st March, 1928	Rs. 3,20	Rs. 81
30th September, 1928	Rs. 3,71	Rs. 1,12
31st March, 1929	Rs. 3,28	Rs. 81
30th September, 1929	Rs. 2,02	Rs. 90
31st March, 1930	Rs. 1,88	Rs. 81
30th September, 1930	Rs. 1,88	Rs. 1,05

The size of the Cash Reserve is determined by the care, foresight, and experience of the banker and not by any rule of thumb. It would be not only difficult but almost impossible to lay down any hard and fast rules as to the percentage this item should bear to the banker's liabilities to the public because not only may the amount of cash required by the banker vary from time to time but also the needs of different customers at the same time may differ. Nevertheless, there are certain demands which the banker can foresee. A banker by looking at the fixed deposit and bills payable diaries can easily know the maximum amount that may be required for meeting these demands. As regards the fixed deposits maturing during a particular week or month, he may not be sure what percentage will be withdrawn on maturity but in the absence of any special reason for the loss of public confidence in the bank, most of them may be expected to be renewed. In this respect the banker's experience will be his best guide. However if the banks of the same status or government raise their rates of interest on short term borrowings, fixed deposits of a banker may be affected unless he also agrees to offer higher rates. For instance as a result of the issue of Postal Cash Certificates.

giving a yield of 6 per cent.\* free of income-tax, Government have attracted a fairly large amount of money, a portion of which would otherwise have flown into the vaults of the banks. Similarly the issue of Treasury Bills yielding attractive rates of interest cannot but divert funds from banks to the government. Again, some of the demands are more or less regular. For example, a banker in England knows that on every Saturday his customers, who employ labour, require certain sums of money for the payment of wages. Similarly in India where salaries and wages are usually paid once a month demand for funds for their payment generally in the first week of every month may be more or less accurately gauged. There are certain other periodical demands, for which the bankers are usually prepared. For example, bankers in England know beforehand that they have to pay out large amounts of cash before the Bank Holiday in August and the Christmas holidays in December. In certain parts of India, bankers have to meet a demand for cash just before the Diwali—an important Hindu festival and the New Year's day of Indian business community. Sometimes it is also arranged with customers keeping large balances that they should inform their bankers beforehand if they wish to withdraw at a time amounts exceeding rupees one lakh or so.

### **Important Factors affecting Cash Reserve.**

With regard to other demands we give below the principal circumstances which influence the reserve requirements.

- I. In a general way it may be said that the amount of reserve required by a bank depends upon the habits of the customers and the business conditions in the locality which the bank is serving. Thus, in a manufacturing and commercial community where exchanges are numerous and

Habits of the customers and business conditions in the locality.

\* Reduced to 5½ per cent. from 1st September, 1932 and to 4½ per cent. from the 3rd January, 1933.

rapid it might be necessary to maintain a relatively larger reserve than that in an agricultural community among the members of which the exchanges are less frequent. It is for this reason that the reserve requirements under the Federal Reserve Act, 1913, differ for banks in the different classes of cities and towns.\* On the other hand, in an agricultural country like India the demand for currency during the busy season for financing certain crops may be so large as to require the maintenance of a larger reserve than at other times.

II. Where the cheque currency is popular the need for hand to hand currency is less and consequently smaller reserves will suffice, because payments for these cheques will to a very large extent be made by transfer entries in the books of the bank. For example, if Mr. G. W. Katrak draws a cheque in favour of Mr. R. N. Desai and in case both of them are customers of one and the same bank no cash will be required for the purpose of honouring Mr. Katrak's cheque. Even if they happen to be customers of two different banks, no cash may actually be required because the cheque may be paid by means of a credit entry in the books of the paying bank in favour of the collecting bank.

III. The third important factor which affects the reserve to be kept by a bank, is whether or not there is a Clearing House in the locality where the bank is carrying on its business. As in a city which has a bankers' clearing house most of the cheques pass through the clearing house a banker is not required to find funds for all the cheques drawn upon him and held by other bankers but only for the difference between their amount and those drawn upon other banks held by him. Thus, if on a particular day a bank in Bombay has to honour cheques for rupees five lakhs while it has to receive payments

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\* Vide page 248.

for cheques worth rupees four lakhs drawn upon other banks in the city, it has to make arrangements for payment of only rupees one lakh and not rupees five lakhs as would probably be the case if there were no bankers' clearing house in Bombay, because in that case the bank may not be able to collect cheques drawn on other banks held by it before it is required to honour the cheques drawn upon it.

IV. If a large majority of the accounts are of a fluctuating nature, as is the case with the accounts of share-brokers, cotton merchants and bullion dealers, the banker will require a comparatively large reserve because there is the chance of most of them withdrawing major portions of their balances at a time when there are heavy fluctuations in the prices of shares, cotton and bullion.

V. A bank which has relatively a few large deposits, has to keep a larger reserve than a bank with numerous small accounts, because the larger the number of clients of a bank, the less is the likelihood of any general movement in the withdrawal of the deposits. For instance, if a bank has a comparatively small number of accounts of cotton merchants or mills with large balances the banker may have to meet heavy demands of these clients in the cotton season with the result that unless he has a large reserve he will find it difficult to meet the demands.

VI. The reserve a banker should keep is also affected by the consideration of the amount of commercial paper held by him. If he uses a large portion of his surplus funds in discounting good bills he can manage with a smaller reserve than another banker who invests his funds largely in the form of loans because the former on account of having utilized a large sum of money in discounting commercial paper can in case of need easily convert some of the bills in his vaults

into cash by re-discounting them with the central banking institution.

VII. The size of cash reserve to be kept by a bank is further determined by the amount of reserve kept by other banks in the locality. If some banks keep large reserves and thus win public confidence the other banks may also have to increase their reserve to enjoy the same popularity, just as when a country increases its army or navy, other countries of the same status will follow suit.

VIII. Although the factors referred to above will no doubt affect the reserve a banker ought to keep, his own experience would help him to judge what amount is likely to be adequate to meet such demands as are likely to be made upon him.

Neither in England nor in India there is any law requiring bankers to keep a minimum reserve. The Hilton Young Commission in para 161 of their report had recommended a legal provision compelling every bank or banker transacting business in India, from a date to be notified by the Governor-General in Council, to establish and maintain reserve balances with the proposed Reserve Bank of India equal to 10% of its or his demand liabilities to the public in India and 3% of its or his time liabilities to the public in India. As the Reserve Bank Bill was thrown out this recommendation also could not be given effect to. However, it will be interesting to note the following minimum percentages fixed by the Federal Reserve Act, 1913, in the United States of America, the only important country that has prescribed minimum reserve requirements :

(1) Central Reserve City Banks: 13% of "Demand" deposits and 3% of "Time" deposits.

(2) Reserve City Banks: 10% of "Demand" deposits and 3% of "Time" deposits.

(3) Country Banks: 7% of "Demand" deposits and 3% of "Time" deposits.

Although there is no doubt that laws like the one referred to above are meant to safeguard the interests of the depositors, yet these limitations produce a certain lack of elasticity in the use of funds by a banker, since in actual practice bankers have to maintain larger percentages than those fixed so as to avoid the disturbance of loans and investments on the one hand, and breach of law on the other. Moreover, there are not only many ways of evading the legal requirements in this respect but also the danger of the statutory minimum being regarded as the maximum in relation to a position which changes from day-to-day.

#### **Profitable Uses of Funds.**

The profitable uses which bankers in India make of their funds may be classified as follows :—

- (1) Call Loans and Loans repayable at short notice.
- (2) Purchase of Stock Exchange Securities.
- (3) Loans and Advances.
- (4) Discounts.

The call loans and loans repayable at short notice represent largely the amount lent to the money-market, the bill brokers and discount houses and to a smaller extent to the members of the Stock Exchange "from account to account." As every bank has deposits which may be withdrawn without notice and as the cash in bank's vaults as well as that with the banker's bank is not enough for meeting such demands, money lent in the form of call loans and loans payable after short notice acts as the second line of defence. It has an advantage over the first line of defence because money lent to the money-market earns interest which is not the case with money kept in hand and at the central

Call loans and  
loans repayable at  
short notice.

banking institution. In the leading money-markets of the world the call money rates, *viz.*, the rates for surplus money seeking employment for possibly a minimum period of 24 hours, are considerably lower than the bank rate. In India owing to the absence of a Central Bank and lack of a well-organized money-market call money is sometimes almost unlendable in the slack season at any rate when treasury bills are not available. Consequently, in India the item of call loans and loans payable at short notice has not yet assumed any great importance although more business in such loans has been done during the post-war than in the pre-war period.

### **Purchase of Stock Exchange Securities.**

Bankers invest a fair percentage of their funds in first class stock exchange securities. On June 30, 1931, the Big Five banks of England and Wales held such investments worth £m. 261·4 representing 14·7% of their total assets and the six leading Indian Joint Stock banks (excluding the Imperial Bank of India) had in 1928 Rs. 20,06 lakhs in investments representing 32·59% of their assets.

The following points are in favour of investing funds in the purchase of Stock Exchange Securities :—

(1) They act as a third line of defence as they can be realised in case the banker finds his cash reserve insufficient to meet the unexpected demand of his customers, and money can be borrowed against them at reasonable rates.

(2) They yield a steady and reasonable return on the capital invested.

(3) Their presence in the balance sheet of a bank inspires and strengthens public confidence in the bank.

### **The Selection of Securities.**

Whereas the rating of credit dates back to the last century the rating of securities is of a comparatively recent

growth. In the latter case a banker assigns to each issue a definite rate or rank based upon one or more qualities chosen. Different principles may govern the rating of different types. To a certain class of investors one quality may be of a greater importance than the others. For instance, a person requiring the funds he wishes to invest till the marriage of his son or daughter after a few years, would prefer short-term securities whereas a widow requiring interest for her maintenance will do well to put her funds in long-dated securities. However, an investor has to study his own requirements and modify the rating so as to suit his circumstances. The banker will, therefore, bear in his mind the following points while selecting the securities :—

(1) *Safety*:—A banker must first look to the safety of his funds, as he cannot afford to lose the money he thus invests. He should take a long-time view rather than the immediate prospects. A speculator dabbling in securities may lose the whole or major part of his money in risky deals, but a banker whose funds are largely borrowed ones is in a different position. He has to look before he leaps. He should bear in mind the fact that the safety of a security depends upon the credit of the person or institution issuing it. For instance, in normal times a Government Stock, backed as it is by the tax paying capacity of the whole community and its willingness to make sacrifices, if necessary, to keep its collective good name as an honest payer of its debts, is considered very safe whereas the promissory note of an individual or the debenture stock of a company depends upon the credit of the person or corporation issuing it. In the case of foreign securities as well, there is the risk—not inconsiderable at the present juncture—of loss to the banker through adverse fluctuations in the rates of exchange. For example, a banker in India who bought some sterling securities before the last War when the rupee was linked to 16d. is bound to suffer loss owing to the change in the rupee-sterling ratio



irrespective of loss or gain due to the fluctuations in their prices. An American banker holding sterling securities finds himself in exactly the same position since 21st September, 1931, when England went off the gold standard.

2. *Marketability* :—The banker must make sure that the securities in which he invests his funds are easily salable without appreciable loss; otherwise one of the objects we have mentioned above, *viz.*, that the banker's securities should form a third line of defence for him, will be defeated. If at any time the banker requires a large amount of cash to meet the extraordinary demands of his customers and he is in consequence obliged to realize securities, he will not be able to sell them at reasonable rates unless they are such as can be placed quickly in the market and in fairly large blocks without any appreciable price disturbance. Government and Municipal Bonds, Port Trust and Improvement Trusts Stocks can be disposed of in fairly large quantities without forcing down their market prices, but generally industrial and the like shares except those of a very few companies are not easily marketable, and when it is desired to sell particularly for cash a large block of such shares at a time of pressure, it proves difficult to do so without a considerable reduction in prices.

3. *Stability of price* :—The investments which are popular with bankers possess the attribute of stability, since the primary object of a banker in buying securities is not to gain by possible rise in their prices—the aim of a speculating dabbler—and therefore the securities should be such as are not liable to wide fluctuations so that the banker can retain them unless he is pressed for funds. A banker is not in the position of a speculator who buys in anticipation of an immediate rise and sells thereafter. Furthermore, it has proved prejudicial to the credit of a bank to be known to hold securities not possessing this quality of stability, and although a fall in the

quotation of such stocks may but slightly affect its position there is the danger of its depositors and shareholders becoming nervous when they know that their bank holds shares which are unstable in their prices.

4. *Income or yield* :—A banker must also consider that his investments should bring him a fair and stable return on the capital outlay, although he should not look for the high yield which comparatively speculative securities are able to give. In calculating the yield, it is necessary to take into account the market price, the rate of interest the securities carry, and the date of redemption, if any. Banker's investments may include long-dated securities quoted far below their face value, because in addition to the investment being for a fairly long period, he has the advantage of capital appreciation which may escape the payment of income-tax. On the other hand there is the risk of greater depreciation.

When a certain security is quoted at a discount or premium, the discount or premium affects the yield, e.g., 6½% Bombay Development Loan payable after three years and quoted at a premium of 5% brings a return of less than 5% as the holder will lose Rs. 5 per hundred after three years or roughly a yearly loss of 1⅔% in the capital value of the stock. It must also be remembered that the prices quoted for Government Loans and debentures in India are generally exclusive of accrued interest, and therefore interest up to the date on which they are delivered, is paid to the seller over and above the price agreed upon.

In addition to the considerations explained above the ideal investment should have fair chances of appreciation, be reasonably free from burdensome taxes, and its duration and denomination should be acceptable.

**Classification of Securities.**

Having considered the general principles which should guide a banker in the selection of securities for investing a part of his working capital, it is desirable to state the principal features of the chief types of stock exchange securities, *viz.*, the securities which are officially listed and dealt in on the stock exchanges.

The following are the main classes of stock exchange securities:—

I. *Public Debts*:—The securities belonging to this class are the various loans of the Government of India and the Provincial Governments.\* When a Government finds its current revenues from taxes, duties and other sources inadequate to meet the current expenses, as is the case during a war or when large sums of money are required for productive purposes, *e.g.*, irrigation, railway, and development schemes, it has to borrow funds. The terms as regards the interest and the repayment are settled according to the conditions of the money-market, the credit, and the state of the finances of the Government borrowing the money. Generally, no particular asset is earmarked for the purpose of the payment of interest or capital and therefore such securities rest upon the willingness and capacity of the people concerned to be taxed. In other words when a Government borrows, the credit of the entire nation is taken into account and therefore the Governments of rich countries, *e.g.*, the United States of America and the United Kingdom are able to borrow funds at lower rates than those paid by the Governments of countries like India and Australia. No doubt there are also other factors such as the stability of the Government which account for the differences in the rates of interest on securities of the Governments of different countries as well as the use they make of the money they borrow. When loans are raised largely for productive

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\* For a list of these securities see Appendix C 2.

purposes such as for the building of railways and the construction of canals as is the case with most of the loans of the Government of India, money can be borrowed at a lower rate than when funds are required for carrying on a war.

The rating of Government securities is largely dependent upon the finances of the country. Account has also to be taken of the special factors such as the geographical position, the trend of growth of population, the political situation and the past record extending over a series of years.

These securities may either be short-dated or long-dated.

Short or long-dated securities. The short-dated securities have their advantages and disadvantages. For instance, if Government have to offer a high rate of interest on account of war or some other special reasons it may be better for it to borrow funds in the form of short-term loans as with the improvement in its credit and the reduction in the general rate of interest the security can be converted into one carrying a lower rate as has been done in this country during the few years after the war. The 5% sterling British War loan has recently been converted into 3½% loan. However, in case the credit of the state falls, short-term securities give far more trouble to the Government than long-term securities as Government find it difficult to repay short-term loans. From the point of view of an investor for a short time such a security is preferable to a long-term security and *vice versa* from the point of view of those who want a long-term investment.

II. *Semi-Government Securities* :—Next to the public debts are the Semi-Government securities, such as, Port Trust, Improvement Trust and Municipal bonds and debentures, which are considered very safe, as firstly, these bodies hold very valuable properties and secondly, their efficient control and administration is provided for as these bodies have on their boards of management not only members nominated by

Government but also the representatives of commercial bodies, such as the Chambers of Commerce etc. Thirdly, the municipalities also have the support of those who either live or own properties within the limits of the particular municipalities just as there is the credit of the entire nation behind the Government securities. As Government can add to their revenues by raising the rates of existing taxes and imposing new ones, similarly bodies like Municipal Corporation and Port Trusts can put up their rates and taxes in order to balance their budgets. Fourthly, generally in the case of Government securities as well as those of Semi-Government institutions as mentioned above provision for the sinking funds for the purpose of paying off their holders is made. Consequently securities of such bodies which may either be in the form of bonds or debentures are considered very safe. However, their buyers have to be careful about the legality of their issues. Such securities have been held as illegal for one or more of the following reasons given by Mr. Jordon\* :—

(a) The legislative Act relied on has been held unconstitutional ;

(b) the debt limit has been exceeded ;

(c) statutory authority has been lacking ; and

(d) statutory requirements for proceedings have not been lived up to.

An ordinary investor is not in a position to inquire into these matters, and it is therefore desirable to buy them through some well-known bond houses, or share brokers. In this connection it may be observed that India needs companies such as the Investment Registry Co., Ltd., of London which not only buys and sells securities on behalf of its clients but also keeps a close watch on the securities held by them.

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\* Investments, by David Jordan, 2nd Edn., p. 83.

Securities belonging to classes I and II given above and most of the railway securities are considered very safe and are classed as trustees securities. The following briefly indicates the position of trustees as regards the investment of trust funds.

Trustees securities.  
 Sec. 20 of the Indian Trusts Act, 1882 as amended by the Indian Trusts Amendment Acts of 1908 and 1916, lays down :—

“ Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

(a) In promissory notes, debentures, stock or other securities of Government of India, or of the United Kingdom of Great Britain and Ireland ;

(b) In bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India ; provided that, after the fifteenth day of February 1926, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity ; but nothing in this proviso shall apply to investments made before the date aforesaid ;

(bb) In India three-and-a-half per cent. stock, India three per cent. stock, India two-and-a-half per cent. stock or any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India ;

(c) In stock or debentures of, or shares in, railway or other companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Government of India ;

(d) In debentures or other securities for money issued under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, Port Trust, or City Improvement Trust in any Presidency town, or in Rangoon town, or by or on behalf of the Trustees of the Port of Karachi ;

(e) On a first mortgage of immoveable property, situated in British India, provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one half, the mortgage money ; or

(f) On any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf ;

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing."

Sec. 20-A. (1) "A trustee may invest in any of the securities mentioned or referred to in Sec. 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

Powers to purchase redeemable stock at a premium.

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per cent. above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock fund or security which may have been purchased in accordance with this section."

Bankers generally prefer such securities not only because they are safe as, in case of need, money can be raised against them without any difficulty, but also because their prices are comparatively steady. No doubt in times of war and political upheavals their prices may fluctuate widely but in normal times the range of their fluctuations is narrow.

III. *Railway Securities* :—In this class are included shares, stocks, bonds and debentures of different kinds of railways. The interest on some of these securities is guaranteed by the Government of India and in certain cases the guarantee is applicable to the principal also. Some of them carry a guaranteed minimum rate of interest and the surplus profits after the payment of the same are required to be divided in certain proportions. In the case of feeder railway companies generally the Government or the railway company working the line undertakes to refund if necessary such portion of the earnings from the traffic interchanged between the feeder company and the working agency line as will be sufficient to give the company 5 per cent. return on the capital expenditure by the feeder company subject to the proviso that when its net earnings exceed the amount required for the payment of 5 per cent. of such expenditure the surplus is to be divided equally between the working agency and the company. There are at present thirty-four such railway companies whose shares are quoted on the Indian Stock Exchanges and their total capital (including Debentures) is approximately a little over twelve crores. Such securities are generally considered very safe as in addition to the valuable properties which railway companies own they enjoy the monopoly of running railways through certain tracts of the country. Thus they can be almost sure of getting a reasonable revenue. Particularly the



securities which carry Government guarantee either for interest alone or for capital also are considered very suitable for the investment of banker's funds. Moreover, such securities have an additional advantage that the earnings from traffic of such companies are published every week and therefore their financial position can be gauged from time to time without any difficulty.

#### IV. *Securities of the Public Utility Companies*:—

Generally speaking, a public utility company is one which supplies a product or renders a service necessary for the welfare of the people. The distribution of water, light, heat and the control of the means of transportation and communication are spoken of as public utility enterprises which are more or less indispensable to the general public. Instances of such public utility companies are the various Electric Supply, Tramways, Gas, Telephone and Hydro-Electric Power Companies. The securities of such companies are generally regarded quite safe as their business to supply necessities of life such as water, power and gas or provide means of communication and transport, is considered quite sound. Moreover, they have generally the monopoly of supplying the particular utility or product in certain localities. The banks, therefore, do not hesitate in investing a portion of their funds in the debentures and occasionally also in the shares of first class public utility companies.

V. *Industrial Securities*:—All the other securities which do not belong to any of the types explained above may be classed as industrials. This group, therefore, includes the securities of manufacturing, building, mining, oil-producing, shipping and other productive enterprises. As a whole the industrials represent a much larger capital investment than securities of any other group.

On account of the different kinds of securities issued by industrial concerns and the great variety of enterprises

undertaken by them it is hardly possible to lay down any general rules regarding the acceptability of this class of securities securing banker's advances. No doubt securities of certain industrial and commercial concerns are almost as safe as the securities belonging to the other classes referred to above, yet there are several others issued by concerns with such wide fluctuations in their prosperity that even experienced investors hesitate to touch them. Only those investors who are not content with a low yield of interest on other investments and who are not afraid of taking the risks ordinarily attendant upon the investment of funds in stocks of such concerns would subscribe freely to their share capital and debenture issues as they offer the prospect of a higher yield than that from gilt-edged securities. Debentures of certain industrial concerns are regarded quite safe, their preference shares fairly reliable, ordinary shares speculative and deferred ones highly risky. On the other hand dividends on their shares are dependent upon profits, which in turn are governed by various factors, such as the price of raw materials, wages, over-head charges, and the demand for the manufactured product and in the event of changes in one or more of the latter the capacity of the company to pay dividend may be diminished or increased. In the case of such concerns not only the profits but even the security of capital may depend upon the prudence, honesty or ability of the management, whereas in the case of gilt-edged securities, receipts accruing from rates, dock dues, railway-fares, freights, etc., depend to a much less degree upon such factors. Bankers will as a rule give preference to debentures and next to them to preference shares of good companies over their ordinary and deferred stock.

#### **Loans and Advances.**

We have noted above that generally the percentage of funds invested by most of the banks in stock exchange securities is small and therefore they have to look to the other profitable

Importance of  
loans and advances.

ways for employment of their funds. Amongst these are the granting of loans and overdrafts and the discounting of commercial bills. There is no fundamental difference between the different forms in which bankers give accommodation to their customers which, as already stated in the opening chapter is one of the most important functions of modern banks. In a large number of cases the proceeds of loans and discounts are credited to the current accounts of the customers who make the disbursements by cheques. Thus when a banker discounts a bill for a customer he places the amount of the bill less discount charged to the latter's current account. The lending function of banks is so very important in modern times that it is almost impossible to disregard it in the case of any bank much less in the case of commercial banks with which we are chiefly concerned. Although receipts from exchange, commissions and banker's charges contribute a fair amount to the profits of a commercial bank, its earnings are chiefly derived from interest charged on loans and discounts. It is, therefore, necessary to consider carefully the position of a banker with regard to loans and advances. However, before doing that we propose to state briefly some general principles which should guide him in this business.

### **Some General Principles.**

“Safety first” should be the first guiding principle of a banker in the matter of granting loans and advances, as the very existence of a bank depends on the safety of its outstandings, which should never in the race to earn increased profits be sacrificed to the profit-earning capacity of its advances. Consequently to keep a banking concern in a sound condition it is very essential that the safety of its advances to customers should be above suspicion. Scrupulous care should be taken that the funds lent out are not subject to any risks of being lost.

Secondly, the banker while making advances must see that the money he is lending is not going to be locked up for a long time, which would make his loans and advances less liquid and more difficult to realize in cases of emergency. In fact, it is not the function of the commercial banks to make loans which are more or less of a permanent nature. Usually, it is a part of the circulating capital of a commercial or industrial concern that a commercial bank can be expected to provide. The amount required for fixed assets such as land, building and machinery and even a part of the circulating capital should be provided by the proprietors of a business. A commercial bank can afford to lend funds only for a short period as its liabilities are either payable on demand or at short notice. If it makes advances for fixed assets there is no likelihood of its being able to recall such loans so as to meet the demands of its depositors in case of a general withdrawal of the deposits from the bank. This is one important aspect which distinguishes the banking from the insurance finance. "The art of banking consists in knowing the difference between a mortgage and a bill of exchange." A mortgage is a kind of more or less permanent investment and therefore not ordinarily a banking security. The discounting of a bill of exchange, on the other hand, is a most sound banking transaction. Of course, industrial banks which have a large capital of their own and which borrow funds for long periods can safely lend money required for fixed assets and they can wait for several years for the payment of their advances as their liabilities do not mature on demand or at short notice.

Bankers generally make their loans repayable on demand, although there may be an understanding that the customer would be allowed to use the funds for at least a certain period, provided he complies with the terms of the agreement. They also reserve to themselves the power of cancelling or

Bankers' loans  
generally repayable  
on demand.

reducing the amounts of advances, but generally they have to give a reasonable notice. For instance, if a banker who has promised his customer an overdraft to the extent of Rs. 10,000 wishes to reduce its amount to Rs. 5,000 he cannot refuse to honour his customer's cheques issued before the latter's receipt of the notice from the former so long as they do not exceed the limit of the overdraft agreed upon. If the customer's securities depreciate and he fails to maintain the margin in accordance with the terms of his agreement with the banker or if the customer deals with the security given to the detriment of the banker, as would happen in case he gives to another person a legal mortgage of the property of which he has given an equitable mortgage to the banker, the banker would be justified in dishonouring his customer's cheques. However, in actual practice a banker would give notice of his intention to reduce the amount of the overdraft beforehand unless the customer deposits more securities.

It should also be stated that it is better for a banker to

To advance moderate sums to a large number of customers preferable to lending large amounts to a few persons.

advance moderate sums to a larger number of customers in preference to large sums to a few customers as there is less chance of there being a general default by many customers, whereas, on the other hand, it is quite possible that several of the heavily indebted customers of a bank may be embarrassed at more or less the same time in which case the banker may not find it easy to tide over the difficulty. The early history of English banking is replete with instances of the failure of several banks chiefly on account of their having locked up most of their outstandings with a few clients. In India also the failure of some banks is directly traceable to the fact that they had invested major portions of their funds in concerns under more or less one man's control. It is with this object that the National Banking Act restricts the maximum of the capital and surplus that a bank can lend to

a person, partnership or company. The unwisdom of putting all one's eggs into one basket cannot be too often reiterated.

### **Advances by Indian Banks.**

An Indian banker's advances are generally either clean advances against personal credit with a second signature to the promote or against tangible and marketable securities lodged or pledged with the lender. The third class of loans, *viz.*, clean advances against the personal credit of the borrower only, which are fairly common in western countries, is not favoured by bankers in India who rather prefer promissory notes endorsed by shroffs or by some managing agents or firms of agents. Even the hundi, the origin of which dates back to the days of Mahabharata, is in effect a two-name paper. According to the Indian Central Banking Enquiry Committee the factors responsible for this are :—

(a) The absence of touch and the lack of knowledge resulting therefrom between borrowers and lenders in the principal money-market centres ;

(b) the absence of the policy " one man, one bank " which prevails in western countries ;

(c) the practice in India which has been materially assisted by, and has in its turn fostered the managing agency system ; and

(d) the absence of institutions like ' Seyds ' and " Duns " for supplying information about the financial standing of borrowers.

### **Cash Credits, Overdrafts and Loans.**

Advances by an Indian Bank generally take one of the following three forms, *i.e.*, cash credits, overdrafts and loans. A cash credit is an arrangement by which a banker allows his customer to borrow money up to a certain limit against a bond of credit by one or more sureties or certain other securities. This is the most favourite

Cash credits.

mode of borrowing in India on account of the advantage that a customer need not borrow at once the whole of the amount he is likely to require, but can draw such amounts as and when required. Generally, banker's cash credit agreements provide a half or quarter interest clause according to which the customer has to pay interest at least on half or quarter of the amount of cash credit allowed to him even if he does not use half or quarter of its amount. Although in practice clean loans on personal credit of an individual of undoubted means and character turn out to be just as safe and satisfactory as any other, yet an Indian banker, partly due to his innate conservatism and partly on account of the tradition established by the old Presidency Banks insists on having paper with at least two names as security for his advances, as a clean advance on a single name promissory note unsecured by collateral is looked upon by him as less secure.

When a customer requires accommodation temporarily, he may be allowed to overdraw his  
Overdrafts. current account usually against collateral securities. Sometimes bankers also charge a small commission on the turnover of the current account when a certain minimum credit balance is not maintained. The essential difference between a cash credit and an overdraft is that the latter is supposed to be for a comparatively short time whereas the former form of accommodation is used by commercial and industrial concerns. When a banker grants a loan he generally debits his customer's loan account with the amount and transfers the same to his current account. Thus the customer has to pay interest on the whole amount whether he makes use of it or not. However, if the banker allows interest on the current deposits the customer's credit balance of the current account will earn interest thereon at a much lower rate than the one charged on the loan.

## CHAPTER IX.

### EMPLOYMENT OF FUNDS (*Contd.*).

#### **Unsecured and Secured Loans.**

The Indian Companies Act, 1913 requires that a bank's advances should be classified as secured and unsecured and shown separately in the balance sheet. The bulk of the loans granted by banks in India is generally secured by the tangible security of valuable collaterals such as bonds, shares and immovable property, or by merchandise deposited either in the bank's godowns or in the godowns of the borrower under letters of hypothecation, but occasionally loans are granted even without any security. We shall first consider the unsecured ones.

An unsecured loan is one for which the banker has to rely upon the personal security of the borrower. **Unsecured loans.** The chief basis of such transactions is credit. It is, therefore, necessary to state briefly the meaning and basis of credit and to indicate the principal points which should be remembered in connection with the determining of the credit of customers.

The word 'credit,' as used in ordinary parlance as well as in the scientific books, has different meanings. Many definitions of the term given in text books differ chiefly on account of the difference in the emphasis which different writers on the subject place upon the different aspects of the same.

Professor Laughlin says,\* "In its simplest form credit is a transfer of commodities involving the return of an equivalent at a future time."

\* The Principles of Money by J. C. Laughlin, p. 72.



Knies defines credit as an "Exchange in which one party renders a service in the present while the return made by another falls in the future." This definition was criticized by Nasse, as it lays too much emphasis on the element of futurity. According to his own definition "Credit is the confidence felt in the future solvency of a person, which enables him to obtain the property of others for use as a loan, or for consumption." Macleod speaks of credit as "the present right to a future payment."

The origin of the word 'credit' is '*credere*,' to believe, to trust, to have confidence or faith in. In its popular usage, however, credit implies the power of a person to induce others to part with their goods and services in return for a promise implied, oral, or written, to perform some act in the future, usually the payment of money. For example, if one Mr. Dastur is able to persuade Messrs. Bhide, Apte & Co. to let him have certain goods worth Rs. 500 to be paid for after three months the transaction will be regarded as a credit transaction. On the other hand, if the goods are given in exchange for cash the transaction is known as a cash one. The chief difference between these two transactions is that in the case of the first there is the time element, that is, the purchase of the goods and the payment for the same are separated by time, which is not the case in transactions of the second kind. Similarly, in the case of money loans the receipt of the money by the borrower and its repayment are separated by time. But 'futurity' alone does not explain the existence of credit. Credit is given because the lender has *confidence* in the borrower's *ability* and *willingness* to repay the loan. On the other hand credit does not exist because of *confidence* alone but because present goods and services are given on the basis of an expected future return. The creditor will part with the power to obtain goods and services in the present,

Credit transaction distinguished from cash transaction.

only because he knows that the borrower has a certain amount of capital which can be possessed and used or sold, if payment is not made in money. "Much can be said on both sides," but to avoid prolixity we should assume that both *confidence* and *futurity* are essential features of credit.

As regards the reason why one person agrees to extend credit to another there is hardly any unanimity of opinion. It is generally believed that *confidence* is the basis of all credit transactions; i.e., if those who grant credit have no confidence in the willingness and ability of the borrower to repay the loan at maturity they would never think of granting these loans except perhaps on personal or philanthropic grounds. No banker would willingly make a loan unless he has sufficient confidence in the borrower to believe that it will not be necessary to seek the help of a law court for its recovery. It should, however, be asked, "What is the basis of confidence?" To answer this question is to answer the question as to the basis of credit. The fundamental principles upon which credit is generally based are Character, Capacity and Capital\* which are known as the three C's of credit. It will be apparent that these factors are not quite unrelated. A person whose character and capacity are good is likely to have some capital as well.

Character is the greatest single asset any individual can have. The character of the borrower indicates his intention to repay the loan whereas his capacity and capital are important factors upon which depends his ability to repay the money advanced. If a person's integrity is known to be questionable the banker will avoid him even when he wants accommodation against collateral

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\* For 'Capital' sometimes 'Cycle' is substituted implying the business-cycle, i.e., the economic factors which regulate the ebb and flow of business. Instead of the three C's some authors mention the three R's, i.e., reliability, responsibility and resources.

security, because it may later on transpire that his title to the security deposited is defective in one respect or another which may not be apparent from the ordinary examination of the documents or he may turn out to be a holder of the security in his fiduciary capacity. This applies particularly to cases in which the banker takes only an equitable charge. Even when the banker acquires a legal title to the security deposited with him his position though quite strong is not absolutely unassailable as sometimes, after advancing money against a legal mortgage of a property he may find to his detriment that its owner has executed a long lease at a low rent in favour of some one else. If such a person opens a current account with a banker he has to be very careful with regard to the honouring of cheques drawn upon him by the customer as well as the collection of cheques for the credit of his account. But 'honesty' alone does not constitute character. There are several other factors for example "the sobriety, the promptness of payment, good habits, personality (which includes the kind of associates) the ability and willingness to carry a project through from beginning to end, and the reputation of the people with whom he deals which go to make the *character* of customer."

The following few examples will illustrate the above statements \* :—

(i) An apparently respectable man applied to his bank for a loan. Not being well known, he was asked to obtain the indorsement of a friend known to the bank. On the maturity of the loan the borrower again applied to the bank for its renewal. On being told that the loan would be renewed only upon his obtaining the consent of the indorser he immediately stated that the indorser would either have to consent to a renewal of the note or pay it himself. He was put down as a poor credit risk as he failed to appreciate the kindness of his

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\* *Bank Administration*, by Trant, pp. 189-191.

indorser and was apparently indifferent to the inconvenience to which he might put his friend. He lacked a sense of responsibility.

(ii) A well-dressed man enters a bank-manager's office and asks for a loan. He succeeds in obtaining only a small amount. When he is gone, the manager, in the course of conversation with another customer, comes to know that the man is a gambler with a fine reputation for that fatal *honesty* so common in this trade. The loan being a small one the risk is not great. But usually no banker would extend credit to a gambler except perhaps when it is adequately protected by collateral.

(iii) A man, notorious for dishonesty and frequent repudiation of his debts whenever possible applies for a loan. He offers collateral but the application is turned down because of his lack of integrity and responsibility. Banks will have nothing to do with such customers even when they offer adequate collaterals for securing their loans.

With the impersonal relationships that have come to exist in modern large scale business, the importance of the other two C's—capacity and capital—has increased a great deal. The former is closely connected with the success or failure of a business. If the customer is not well up in the business for which he wants to borrow funds from the banker, there are more chances of loss than profit. For instance if a person engages himself in the business of provisions and if he is not much acquainted with the line he may suffer losses owing to the deterioration of some goods, *e.g.*, chocolates in summer. The need for the third C—Capital—with the person applying for accommodation is due to the fact that there cannot be absolute certainty about the success of a business and in case there is a loss the customer's capital should be able to provide for the same so that the banker may not have to bear any part of the loss. It

must, however, be mentioned that the amount of consideration which the three C's deserve at the hands of a lending banker will vary in the case of different customers. For example if any two of the three C's are to be found to be satisfactory, whereas the third C is deficient to a negligible extent, the banker may not mind extending credit.

The next question to be considered is how a banker is to obtain the necessary information regarding these three fundamentals of credit. No doubt bankers have to make inquiries from those of their customers and other persons likely to have had dealings with the party whose credit is to be inquired into as well as from credit information bureaux such as Seyds in England and Duns and Brad-streets in the United States of America. The last two named have on account of their operations extending over a number of years collected a very large amount of information about business houses in North America and publish twice a year reference books giving information regarding the credit of concerns even in comparatively small towns. In addition to the publication of these reference books they send complete reports about business concerns to their subscribers and these reports give information regarding the following points:—

- (a) History of the business concern.
- (b) Ownership and changes in the same.
- (c) Digest of statements of assets and liabilities.
- (d) Result of investigations in the trade.
- (e) Fire records.

In India such agencies have not yet come into existence but there is no doubt that with the development of credit the field for this kind of work is bound to expand and such agencies will grow up in the near future in spite of the fact that there are certain inherent difficulties in the way of this work in India.

Absence of credit  
agencies in India.

For instance, owing to their illiteracy, a large majority of the people are reluctant to give information about their financial position. Handicapped as they are, individual banks in India at present generally maintain special departments for collecting information regarding the financial position of their customers. When such information is collected by banks through third parties it cannot always be entirely relied upon as the person or persons through whom it is collected may, innocently or intentionally give either too rosy or too gloomy a view of the financial position of the party concerned. An entirely Indian system of credit agencies suited to Indian needs and conforming to Indian customs is the need of the moment. We need a system which should be "as Indian as the Ganges."

When a bank is approached for credit facilities by persons or firms who happen to be its customers the examination of their accounts and past dealings will be very helpful. For instance, a careful examination of the account of the person applying for accommodation will show whether or not he is over-trading. Similarly, if the bills discounted for him have always been duly honoured it will count as a point in his favour.

Besides the abovementioned sources of information the credit department of a bank has to scrutinize closely the newspaper columns, cuttings from which are taken and kept in the respective files of their customers. It is the duty of the credit department of a bank not only to collect such information but also to record it in a handy and easily intelligible form. In addition to this a customer of a bank requiring accommodation from it is generally asked to give certain information regarding the nature of the business, the form and the purpose in and for which accommodation is required as well as the date of repayment. The banker should know the form in which the accommodation is required so as to enable him to consider whether or not it would suit him. For

instance, a commercial bank would not like to grant a loan for a long period. No hard and fast rules regarding the purposes for which loans should be sanctioned can be laid down as it may be necessary to discriminate more at one time than at another. However, when the money-market is tight preference should be given to those customers who require accommodation for genuine business requirements over those who require it merely for speculative purposes. Similarly, when a customer is living beyond his means it is not desirable for a banker to encourage his extravagance.

Another important source of credit information to a banker is the copies of the customer's balance sheet and profit and loss account for the last few years or a statement of his assets and liabilities which should be, as far as possible, certified by a competent and reliable accountant. Such preliminaries apply to trading customers and are very necessary as they tend to reduce the risks of bad debts of the banker. Indian borrowers are generally reluctant to divulge their financial position readily to their bankers; but if bankers insist on their customers to submit copies of their Balance Sheets and Profit and Loss accounts along with the loan applications the former will have no difficulty in obtaining the necessary information from the latter.

### Analysis of a Statement.

The following general hints regarding the analysis of financial statements will, we trust, be found useful:—

In the first place, a statement should be of a *fairly recent date* as a statement showing the customer's position for some past year which may be very much better than that at the time the person applies for accommodation. It is also desirable to see that the statement does not refer to a period when merchants

in the particular trade to which the borrower belongs have their indebtedness at its lowest point. Moreover, the information given in the statement should be verified by independent inquiries as far as possible, particularly when the same is not duly audited by a reliable firm of auditors.

Secondly, the statement should differentiate between the assets and liabilities which are of a *liquid* nature and those which are otherwise. Among the liquid assets may be mentioned cash in hand, cash with bankers, bills receivable, shares and bonds, and merchandise, raw, finished, or in the process of manufacture. The items of quick liabilities are acceptances and amounts due to trade creditors and banks. Lands, buildings, plant and goodwill are some of the principal items of fixed assets, and mortgages and debentures are the chief amongst long-term liabilities.

In examining a statement the banker must see whether or not the would-be borrower can meet his current or short-term liabilities with the help of his quick assets. It is necessary to do so because the continuation of the business may depend largely upon the fact whether or not the concern will be able to meet its liabilities as they mature. For instance, if a businessman is unable to honour his acceptances his credit may suffer so much that he may have to close his business although his fixed assets may be sufficient to meet all his liabilities. Bankers are usually satisfied if the liquid assets and short-term liabilities bear a ratio of at least 2 to 1.

We shall now deal with the principal items of the statement separately and comment upon them.

Cash. One of the chief items on the side of assets is the *cash* account of the borrower in the examining of which the banker should see whether by chance it does not include



I. O. U's of the proprietor or the manager. While auditing the accounts of a small bank which closed its doors during the banking crisis of 1913 the present author found on examining the petty cash book of the bank that 60 to 80% of the cash in hand shown in the cash book was represented by the I. O. U's of the managing director of the bank. Such a practice on the part of a borrower should be discouraged. The banker should also see that the amount of cash in hand at the time of the preparation of the statement is not unduly inflated on account of the pending payment of the dividend declared.

As regards bills receivable the banker should ascertain whether or not they are strictly trade bills received from customers to whom goods have been sold. Taking into consideration the custom of the trade in which the borrower is engaged the banker should see that they are neither for unduly large amounts nor for unusually long periods. Generally a commercial bank is not prepared to lend money against bills for long periods as on account of their slow maturity they are not considered as good assets.

In examining the item of book debts and accounts receivable the banker has to satisfy himself whether having regard to the business done they are not unduly large, otherwise some of them may not be recoverable. Also by looking into some of these accounts he can find out whether they are good or bad. The customer should be asked to sign a statement that sufficient provision has been made for doubtful debts.

As regards the stock, it may not be feasible to get the inventory made and its value estimated by an independent and reliable valuer and therefore the bank may generally have to rely upon the borrower's valuation. However, in such a case the latter

should state that no unsaleable and deteriorated goods have been taken into account and the valuation has been made according to the cost or the market price whichever was lower at that time. Of course the banker's estimation of the borrower will also depend upon the nature of the business, the relation of the stock to the sales, etc. The banker should also see that the stock carried is not in excess of the requirements of the concern.

As regards the stock exchange securities held by the applicant for loan, the banker should try to find out the object with which they are carried as an asset. If the borrower has invested funds which he cannot profitably use in his own business and therefore invests them in securities his credit position is strengthened, but on the other hand if they happen to be of a speculative nature the banker should regard them with some suspicion. As the latest market prices of such securities are available without any difficulty, the banker can easily ascertain their market value. However, this does not apply to all kinds of shares and stocks. For instance, the shares of several companies floated in post-war years are not easily saleable and the quotations which appear against them in financial and other papers, are merely nominal, hence they cannot be relied upon. Moreover, the banker has to see whether the shares held by the customer are wholly or partly paid-up because in the latter case they carry a further liability.

In the case of fixed assets, the banker should ascertain whether the land and buildings are not subject to any incidental charges. He has also to satisfy himself that they are in good repair and adequately insured against fire, deluge and earthquake. He should not only take into account the current value of the property, but should also have due regard to its prospective value.

In the case of plant and machinery the banker has to see that they are in good condition. He should find out the policy of the applicant regarding the proper provision for the depreciation of such assets so that in case the building has to be pulled down or the plant to be replaced there should either be a proper reserve available for the purpose or the book values of such assets should be brought down so low as not to affect the position of the concern.

There may be certain sundry assets such as leaseholds, goodwill, patents, trade-marks, etc., whose  
 Sundry assets. values should generally be ignored by the banker as in the case of liquidation of the business they are not likely to fetch any price. It is to be noted that the banker has to take into account the break-up value of fixed and other assets when considering applications for loans.

As regards the liabilities, the banker should first see that  
 Acceptances. all the acceptances are for goods received. In the ordinary course of business merchants accept bills drawn by persons from whom they purchase goods. If the applicant for accommodation accepts bills drawn by persons other than those from whom he has purchased goods or to whom he is indebted this will count as a point against him. The bills payable register gives the details regarding the names of the drawers, amounts, and the dates of maturity of the bills. Although in order to be sure about the total liability under the heading it may be necessary to communicate with the trade creditors, generally the banker will be satisfied with making enquiries through brokers.

As book debts or accounts receivable represent goods sold  
 Accounts payable. on credit, the item of accounts payable represents goods bought on credit for which neither payment is made nor acceptance is given. This item can be checked with the invoices received. It is desirable that considering the usage of the trade in which

the applicant for accommodation is engaged these accounts should not be overdue. Otherwise it will clearly show that he is unable to pay his debts on due dates; nor should the amount under this heading be unreasonably large. For example, if a concern sells goods worth Rs. 50,000 (cost price) per month it should buy goods worth about the same amount; and if the credit term is one month it should not owe more than the price of goods required for one month. In case a liberal cash discount is allowed in the trade and is taken advantage of, the amount of such accounts should represent invoices which have not been properly checked or for which the period allowed for the claiming of the discount has not expired. It is also desirable that if a concern raises money by acceptances and other forms of borrowings, it should not owe large amounts under this heading.

When the concern applying for loan has no other banker the amount and the terms of the loan taken  
 Other liabilities. from the banker will be known to him. Similarly, the concern may owe money for taxes accrued but not paid and for unpaid salaries and wages. Sometimes these amounts are a source of great anxiety to those responsible for the management of a concern.

In addition to the statement of assets and liabilities the banker should examine carefully the profit  
 Profit and Loss and loss account for the preceding few years  
 Account. as it will show whether or not the business is a paying one. He should not only satisfy himself that all the expenses chargeable to the profit and loss account have been deducted before arriving at the figures of net profits, but also that sufficient amounts have been set aside for the depreciation of certain assets such as plant and machinery, buildings, motor cars, taxis, furniture, etc., which are to be replaced after the expiry of certain periods, and for payment of income-tax, etc. He has to take care that the profits shown are real

and not fictitious. Here it is needless to observe that the banker will also take into consideration the object for which the loan is required.

The following comparison and contrast of financial statements of *A* and *B* and our comments upon the same may interest the reader as illustrative of the general principles stated above.

### Statement of Assets and Liabilities of

*A*

Liabilities.			Assets.		
		Rs.			Rs.
Bills accepted	...	3,000	Land and building	...	6,000
Bank overdraft	...	2,000	Stock in trade	...	8,000
Other liabilities	...	3,000	Book debts	...	8,000
		<u>8,000</u>	Cash	...	<u>2,000</u>
Capital	...	16,000			<u>24,000</u>
		<u>24,000</u>			

*A*'s balance-sheet shows that the net value of his business is Rs. 16,000, *i.e.*, he can pay every debt that he owes and still retain that sum, or, to put it differently, he can pay his creditors 48 annas per rupee provided his assets realise their book values.

### Statement of Assets and Liabilities of

*B*

Liabilities.			Assets.		
		Rs.			Rs.
Bills accepted	...	20,000	Warehouse and fixtures	...	7,000
Bank overdraft	...	11,000	Stock in trade	...	33,000
Other creditors	...	3,000	Book debts	...	8,000
		<u>34,000</u>	Cash	...	<u>2,000</u>
Capital	...	16,000			<u>50,000</u>
		<u>50,000</u>			
Liability on bills discounted.		10,000			

In comparing the two specimen statements given above we find that *A's* capital is identical with that of *B*, while the latter's stock is three and a half times as big as that of the former. Should *B's* stock depreciate by 25% his capital will be reduced to half. The item of fixtures will not realise a large sum. However, if all of his assets realise their book values he can pay nearly 24 annas per rupee. Another weak point of the second statement is that the ratio between liquid assets and short-term liabilities is comparatively small. In *A's* statement the amount of his acceptances and bank overdraft is Rs. 5,000 against which he has Rs. 2,000 as cash and his stock and book debts amount to Rs. 16,000 or more than five times the amount of additional cash required by him to meet his quick liabilities whereas in *B's* case there are book debts and goods worth Rs. 41,000 as against Rs. 29,000 of cash which will be required to meet the liabilities maturing at an early date.

It appears, therefore, that *B's* position compares quite unfavourably with that of *A*.

In order to enable the reader to visualize the working of a banker's brain while considering loan applications, some examples of typical borrowers will not be out of place here.

### TRADERS.

#### 1

#### Messrs. Bose Brothers, Cloth Merchants.

This firm has applied for the continuance of the unsecured loan of Rs. 75,000. Some two years back a new partner who brought in Rs. 90,000, was taken in the business which was then in want of more capital. The loan was not acknowledged by the new firm and the old account was continued as there was no change in the name of the firm. The balance sheet shows that the business is declining.

The banker will be well advised to require the debt to be renewed on the new firm's guarantee. Otherwise, in the case of bankruptcy, he will be precluded from proving against the partnership estate. In case the new firm is not prepared to guarantee their indebtedness to the old, advances should be recalled.

## II

### **The Eastern Trading Co., Ltd.**

The managing directors of the Company want a loan of Rs. 75,000 on their covering guarantee.

The company is an old customer and the turnover is large. It has only recently been registered as a joint stock company with a paid-up capital of Rs. 60,000. The whole estate is valued at Rs. 2,25,000 but is comprised largely of properties more or less mortgaged.

This is a case for due consideration, where character and business ability will count; and, supposing the banker is perfectly satisfied on these points, it is a risk that might be hazarded. As so much depends on management, however, the directors might well be asked to insure their lives to some extent and lodge the policies. No doubt, by itself life insurance does not offer much security as its value is contingent upon payment of future premia, still the banker may accommodate the company after duly ascertaining the extent to which the properties of the company are encumbered as well as the private means of the directors.

### **COLLIERIES.**

Some general remarks.	Mining in collieries is generally liable to a charge at a fixed rate per ton on the coal produced, subject to a minimum annual payment. If in any year payment is made in respect of coal not won the excess charge can be got refunded in the succeeding years, in case the minimum is sufficiently exceeded.
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The question of minimum payment may assume seriousness in bad times. The depreciation of machinery must be made good by ample reserves set aside for the purpose. Even in the case of collieries free from rates or charges the asset is a wasting one, and it is necessary to create a special redemption fund against the time when the coal will be exhausted. Wagons purchased on the hire, instalment, or on the deferred payment system, remain the property of the seller until all instalments are paid. Throughout their life, which is limited, frequent expenditure on repairs is necessary.

The Calcutta Coal Conference started in 1929 has rendered a valuable service by fixing prices for the various qualities of coal and thus eliminating unhealthy competition. Hitherto, when coal prices fell to unreasonably low levels, some companies had not the profits available for essential development work which resulted frequently in wasteful mining.

## I

**Messrs. Mukerjee & Co., Coal Miners.**

Application for Rs. 75,000 in addition to their old loan of Rs. 3,75,000 against first debenture charge.

Liabilities.			Assets.		
		Rs.			Rs.
Paid-up Capital ...	...	9,00,000	Leases and Developments ..	6,00,000	
Bank ...	...	3,75,000	Loose plant etc. ...	5,25,000	
Creditors ...	...	4,50,000	Wagons ...	2,25,000	
Reserve ...	...	3,00,000	Stock ...	2,25,000	
			Book Debts ...	3,75,000	
			Profit and loss ...	75,000	
		<u>20,25,000</u>			<u>20,25,000</u>



This company appears to be doing badly with practically no source of repayments except, perhaps, the wagons. It is not a good risk. If the people connected with the concern will not guarantee in spite of their being old supporters of the bank the application should be refused.

If pressed, however, the company may be accommodated, with an express undertaking not to charge or dispose of the wagons. There is no other easily marketable item on the assets sides that could back the loan adequately.

## II

### The Bengal Colliery Company Ltd.

Application for continuation of Rs. 15,00,000 limit against first debenture charge.

Liabilities.			Assets.		
		Rs.			Rs.
Paid-up Capital	...	45,00,000	Property (freehold)	...	52,50,000
Bank	...	10,50,000	Cottages (freehold)	...	4 50,000
Creditors	...	9,00,000	Wagons	...	10,50,000
Reserve	...	6,00,000	Unpaid	...	4,50,000
Profit and loss	...	4,50,000			6,00,000
					6,00,000
			Stock	...	4,50,000
			Book debts	...	7,50,000
		<u>75,00,000</u>			<u>75,00,000</u>

The position of this company appears to be quite sound and the application for loan may be granted.

### CONTRACTORS.

## I

### Messrs. Yora & Co., Constructional Contractors.

Application for Rs. 15,000 in addition to old limit of Rs. 45,000 unsecured ; and discounts Rs. 30,000.

Liabilities.			Assets.		
		Rs.			Rs.
Bank	...	...	30,000	Book debts	...
					60,000
Creditors	...	...	75,000	Work in progress	...
					2,25,000
Surplus	...	...	5,10,000	Stock	...
					1,50,000
				Premises	...
					75,000
				Plant and Machinery	...
					1,05,000
					...
					6,15,000
					6,15,000

They are known to be employed by people of good repute who are old customers of the bank.

If the Assets and Liabilities Statements for the last three or four years show that the profits are satisfactory, the risk is worth taking.

## II

### The Western Building and Constructional Company, Ltd.

Liabilities.			Assets.		
		Rs.			Rs.
Paid-up Capital	...	7,50,000	Premises	...	3,75,000
Debentures	...	4,50,000	Plant and Machinery	...	3,00,000
Bank	...	1,50,000	Stock	...	1,20,000
Creditors...	...	75,000	Work in Progress	...	1,80,000
			Retention moneys	...	1,50,000
			Book debts	...	75,000
			Good-will	...	75,000
			Profit and loss	...	1,50,000
					...
					14,25,000
					14,25,000

At present the bank holds a sound guarantee for Rs. 1,50,000 but the guarantor has recently died, and the bank is asked to release his estate, taking instead a charge on the retention moneys which from the banker's point of view are a very undesirable form of security. They are, of course, subject to the satisfactory execution of the relative work and defects may not be apparent for some time. They are also subject to equities. The bank should not comply with the request, especially in view of the debenture issue and adverse balance on profit and loss account.

### *MILLS.*

#### I

### **The Amrit Spinning and Weaving Mills.**

Application for continuance of Rs. 15,00,000 limit unsecured ; and Rs. 7,50,000 discounts.

Liabilities.			Assets.		
		Rs.			Rs.
Paid-up Capital	...	75,00,000	Mills and Machinery	...	37,50,000
Bank ...	...	12,00,000	Stock ...	...	52,50,000
Cash credits	...	4,50,000	Book debts	...	20,25,000
Trade ...	...	9,75,000			
Reserve	...	5,25,000			
Profit and loss	...	3,75,000			
		<u>1,10,25,000</u>			<u>1,10,25,000</u>

The mill is old-established and thoroughly up-to-date and has recently been equipped to manufacture fabrics with cotton and artificial silk yarns in combination. It has a market in specialities and its manufactures are well known in the cloth

market. It maintains fair profits even in bad times. It buys its cotton through its brokers on the Bombay Cotton Exchange. The management is all-Indian and the Swadeshi movement will ensure a good demand for its manufactures.

The facilities asked for will be readily granted

### **MERCHANTS OR COMMISSION AGENTS.**

#### **I**

#### **Messrs. Malhotra Bros., Corn Brokers.**

Application for Rs. 15,00,000 against hypothecations with 15% margin, to include confirmed documentary credits ; trust facilities up to Rs. 3,75,000 ; and Rs. 7,50,000 discounts.

They act as brokers to some extent, but they are also merchants on their own account. No balance sheet produced, but they call their surplus Rs. 6,00,000. They have accounts with other banks as well. They now come to this bank for increased facilities. Recently, however, irregularities have been detected in their discounts. It is fairly obvious that a considerable amount of their paper is of the accommodation type. They are also reported to have been speculating wildly, and to have been severely hit.

This is not the time for extending facilities but rather for requiring reductions in their existing liabilities to the bank. The bank would probably be better without the account but it may not be possible to recover everything without a certain amount of effort and pressure.

In the circumstances great care is necessary in granting trust facilities. The possibility of their buying and selling in the same market should be kept in view, as, in the event of insolvency, there is the risk that the bank's claim under a trust letter might be countered by a right of set-off.

From its very nature there is a considerable element of speculation in the corn trade. The demand for wheat

is enormous and widespread, and prices must be mainly governed by world supplies and crop prospects. Values naturally fluctuate widely. However, any attempt to corner the market cannot be other than transient in its action by reason of the many large sources of production.

## II

### **Messrs. Bhagwandas Dwardas & Sons, Cotton Brokers.**

Application for Rs. 5,00,000 on different ear-marked accounts, including the bank's acceptances, against hypothecations with 10% margin, and 20% trust facilities

Their authenticated capital is Rs. 1,00,000. They have the handling of large blocks of cotton brokers. They work generally on a commission; or they may effect orders on a small margin of profit. Evidently a firm of high standing.

The credit facilities will be extended.

### **MISCELLANEOUS.**

## I

### **The Koochperwanipur City Corporation.**

Application for Rs. 2,00,000 on various mortgages; and for Rs. 50,000 unsecured.

Advances are taken on different accounts in connection with various works and undertakings. On other accounts large credit balances are maintained, so that to a considerable extent, the bank would be lending the corporation its own money. As regards the Rs. 50,000, this is required for occasional and temporary use only, pending outside borrowings or collection of rates.

The finances of the corporation are well-managed. It has its local Act, conferring large borrowing powers on the security of all rates, revenues, funds and properties, and, within the

powers conferred by its Act, and by any provisional order in amendment of the same. No further sanction is required. A common form of mortgage has been adopted, and its mortgages, to a considerable extent, are held by the public. Occasionally, it also raises money on redeemable stock and in other ways.

The request will be readily granted on reasonably remunerative terms.

## II

**KHAN BAHADUR JAMSHEDJEE POONAWALA,**

**DIRECTOR, THE BROACH COTTON CO., LTD.**

Application for continuance of Rs. 1,25,000 limit against deeds of farm lands, costing Rs. 1,75,000 at top of the market, at low rate of interest.

The applicant is a locally influential man and there has been a rumour that the company's account may come to the bank. He has failed to carry out his repeated promises to reduce his loan. Apparently he has lost money in different concerns, although still reputed to be well-to-do.

Further security should be insisted on, and a definite programme of reductions arranged. Also the rate of interest should be raised.

## III

**MESSRS. A. K. BOSE & S. H. CHATTERJEE,**

**EXECUTORS, OF THE WILL OF THE LATE SIR S. P. GUPTA.**

Application for a loan of Rs. 50,000 against charge by them on marketable securities worth Rs. 50,000 and on Rs. 10,000, the credit balance of the deceased. The executors

require the loan for the payment of the estate duty and undertake to obtain and produce probate as soon as possible.

The applicants are introduced by reputable solicitors.

The risk would be regarded as a negligible one. The executors should be asked to give their joint and several undertaking, to obtain and produce the probate as otherwise they would be only jointly liable. If the bank is not authorized to pay the amount direct to the Revenue Department it might protect the payment in some other way.

Executors get their title to administrate the estate from the Will itself, and have power to pledge specific assets forthwith. As in the case of trustees, so with regard to personal representatives, a lender can claim against the estate only by standing in their shoes. If the executors cannot recover against the estate the lending banker will be debarred from doing so.

#### IV

DR. J. D. LODHIE, M. D.

Application for Rs. 1,00,000 against Rs. 1,25,000 worth of highly priced marketable securities, *e.g.*, ordinary shares in successful commercial and industrial companies, deferred stocks in leading trust companies, insurance companies, ordinary holdings, etc.

The customer has not much means outside his profession.

The accommodation should not be other than temporary. Highly priced securities of this character are subject to rather wide fluctuations, and, in the event, say, of a sudden fall in their market prices, the margin may soon disappear. Not infrequently it so happens that an accommodation granted temporarily degenerates into a permanent debt. The securities offered being highly priced it would be preferable to have

bigger margin than usual so as to guard against the possibility of any sudden fall in their market price.\*

### **Different Forms of Unsecured Loans.**

We shall now consider different forms of loans for which the banker does not get any collateral security and has to content himself either with the personal security of the borrower alone or together with that of one or more other persons. It may be stated that in modern times it is in a few cases that a banker would agree to lend money against the personal security of the borrower. When a borrower is unable to give suitable collateral securities for securing advances applied for by him, he is asked to get the guarantee of some other person about whose credit the banker is satisfied.

The most important form in which bankers give accommodation without any collateral security is the discounting of commercial bills. This form of employment of a substantial part of the banker's funds is still very popular particularly with the commercial banks in the leading European countries. On December 31, 1931, 20 % of the total liabilities of the Joint Stock Banks of England and Wales was represented in their portfolios by bills discounted during the year. In the case of banks in India similar figures are not available as they do not always show discounts separately from loans. However, from the following table† which is for the year 1928 it will be clear that banks in India do not hold such bills to any large extent, viz., a little less than 2% of the total working capital in the case of the six leading Joint Stock banks and about 13% in the case of the Imperial Bank of India.

\* For further illustrations of typical borrowers the reader is referred to "Bankers' Tests," by Francis R. Stead.

† The Indian Central Banking Enquiry Committee (Majority) Report, p. 408.



The leading six  
Joint Stock Banks\*  
in India.

The Imperial Bank  
of India.

Liabilities :—	Rs. in lakhs.	Rs. in lakhs.
Capital and Reserve	10,85	6,66
Current and Deposit accounts	79,25	52,20
<b>Assets :—</b>		
Investments	19,04	20,06
Bills	12,47	1,23
Advances	51,85	33,42
Cash	10,65	6,83

It will be clear from the above statement that banks in India do not hold bills to any large extent. This is due to the fact that banks in India need not have as liquid resources as their *confrères* in England as the major portion of their deposits are not payable on demand or at a very short notice. Moreover, the yield from Government Securities is higher in India than in England.

#### Reasons for the restricted Use of Bills in India.

The reasons for the limited use of commercial bills in India are not far to seek. (1) The system of running accounts and cash credits is another factor responsible for the restricted use of bills in India. In the case of cash credits interest is either paid only to the extent that credits are used or on the half or quarter of the total cash credit agreed upon and the bank can withdraw credits in the event of any deterioration in the position of the borrowing party. In India a merchant who buys goods on credit does not like to give his

\* (1) The Allahabad Bank Ltd., (2) The Bank of Baroda, Ltd., (3) The Central Bank of India, Ltd., (4) The Bank of India, Ltd., (5) The Peoples' Bank of Northern India Ltd. and (6) The Punjab National Bank, Ltd.

acceptances in exchange. He prefers to have a running account. He may either clear the account by the end of the year—generally before Diwali—or if so agreed upon the balance may be carried forward.

(2) In the absence of a Central Reserve Bank the only existing facility for the Indian Joint Stock Bank to get the bills re-discounted in case of stringency is to go to the Imperial Bank of India which competes with them in this business. A banker going to the Imperial Bank of India for getting the bills rediscounted would naturally have some reluctance as he does not like to give out to his rivals the names of the parties whose bills he discounts. He would rather prefer to lodge some Government Securities with the so-called bankers' bank and take loans whenever he is in need of funds. Even the facility of rediscounting is restricted only to approved bills, *i.e.*, bills approved of by the Imperial Bank of India which offers no guidance to the other banks as to what constitutes an approved bill. Consequently a banker discounting bills cannot be sure as to which of the bills discounted by him will be acceptable to the Imperial Bank of India for rediscounting.

(3) Inadequate number of bank offices in the country is another reason accounting for the unpopularity of bills of exchange. For instance, if goods are sent from Bombay to Delhi and if the bank negotiating the bill in Bombay has no branch in Delhi, a commission has to be paid to the bank at Delhi to collect the bill as the Bombay bank not having a branch in Delhi has to get the business done through another bank to which commission has to be paid.

(4) There being no public warehouses and godowns in India for stocking produce the documentary bills which would be more popular with Indian Joint Stock Banks, are conspicuous by their absence.

(5) The stamp duty on bills for 61 days works out roughly at about  $\frac{1}{2}\%$  per annum. That such a high rate of stamp duty is a great check on the free use of commercial bills was realized as early as 1926 by the Hilton Young Commission which recommended its abolition. The Commission gave the example of America, where the stamp duty on bills was abolished soon after the Reserve Banking System was brought into existence. As against this the reader's attention is invited to the recommendation of the Bombay Reorganisation Committee to levy a stamp duty on cheques in the Bombay Presidency.

(6) The lack of uniformity in the customs governing the hundis is another reason for the scarcity of commercial bills in India. If the hundis were drawn in a simple language without the long prefatory salutations and unnecessary prayers and the conditions definitely defined they would circulate more freely than they do at present.

The following are the chief points in favour of the employment of funds by commercial banks in the discounting of bills:—

(a) It is almost certain that money invested in first class bills will be forthcoming on due dates, firstly, because a businessman who has accepted a bill will do his very best to honour it, as otherwise his credit will suffer considerably, and, secondly, because in case the acceptor fails to make the payment on the maturity of the bill the banker will get his money from his customer, the drawer or one of the endorsers for whom he discounted the bills. Thus from the point of view of security as well as the certainty of payment on due dates the bills are considered so good that Mr. George Ray, the author of "The Country Banker" considered them the best form of banking security in preference even to Consols.

(b) The banker is able to employ his funds for a definite period and by judicious selection of their maturities he can so arrange the investment of his funds as will enable him to meet all the foreseen demands without keeping his funds idle for any time. For instance, if a banker receives a deposit of Rs. 1,00,000 for three months he can use the amount in discounting bills which will mature just a day or two before the deposit falls due.

Employment of funds for a definite period.

(c) These bills are securities of a very liquid nature and when a banker finds it necessary to strengthen his cash reserve he need not go on buying new bills with the amounts which he receives in payment of the matured bills. He can hold back his funds till the time when he considers it no longer necessary to keep a large reserve. In case of urgent unforeseen demands the banker can convert the bills discounted into cash by having them rediscounted with the central banking institution. Thus a bank employing a very large part of its funds in bills can even do with a comparatively smaller reserve than another bank which does not hold many bills in its portfolio.

Liquidity.

(d) As compared with stock exchange securities they have also the advantage of not being subject to any appreciable fluctuations in prices. No doubt with the financial changes fluctuations in the discount rate do take place and thus the rates at which a banker can get his commercial paper rediscounted may vary, but the variations, are not very great, and do not affect the bills unless the banker has an occasion to convert them into cash.

Free from fluctuations in prices.

(e) The yield from the discount is slightly higher than that from loans or advances when the rates charged are equal because in the case of the former the interest known as discount is deducted from the

Higher yield.

amount lent while in the latter case it becomes payable either when the principal falls due or is payable quarterly, half-yearly, or yearly. The following table shows the difference in return per cent. per year between interest on loans and discount on bills :—

By interest.	By discount.	By interest.	By discount.
1%	1.0101 %	6%	6.3829 %
2%	2.0408 %	7%	7.5268 %
3%	3.09278 %	8%	8.6956 %
4%	4.1666 %	9%	9.8901 %
5%	5.2631 %	10%	11.1111 %

If a banker invests Rs. 1,00,00,000 in discounting commercial paper for three months at 5 per cent. and another an equal amount in loans for the same period and at the same rate, the former is able to earn about Rs. 6,600-4-0 more than the latter, as the discount is deducted in advance whereas the interest becomes due on the expiry of the period of the loan.

### Precautions in Discounting Bills.

In spite of the advantages, stated above, in favour of this form of employment of funds certain precautions are necessary. In the first place the banker should see that the bills he discounts are genuine commercial bills and not accommodation paper, as the former have the advantage of being backed up by goods. For example, when a cloth merchant of Calcutta buys a few bales of Dhoties from a Bombay merchant and being unable to pay cash for this purchase accepts a bill drawn upon him by the Bombay merchant, he hopes to sell the goods and meet his acceptance with their proceeds. Thus, the bill is backed up by actual goods—dhoties. On the other hand, if the bill discounted is a “kite,” an accommodation paper, which is merely a means between the drawer and the acceptor of raising money, it will not have such goods behind it. The proceeds of such a bill may be utilised not in the actual purchase of fresh goods but either in the payment of certain

Genuine bills  
kites.

expenses or antecedent debts. Although it is not always an easy thing to distinguish between the bills of one class from those of the other a banker generally does not experience much difficulty in differentiating between the bills of the two classes. For instance, if the acceptor of a bill drawn by a cotton merchant is a doctor, the natural presumption is that most likely it is an accommodation paper to which the doctor friend of the cotton merchant has put his signature to help him. The question which the banker has to put to himself is whether or not the bill is likely to have been issued as the result of some actual commercial transaction between the drawer and the acceptor. It should also be remembered that bills given in payment of fixed assets such as buildings or machinery should be avoided as such bills cannot be regarded as liquid.

Secondly, the banker has to satisfy himself regarding the credit of the drawer, acceptor and other endorsers. We have already stated how the credit department of a good modern bank collects and keeps handy a fairly detailed information regarding the credit of different merchants whose names are likely to appear on commercial bills. If the various parties to the bill are the customers of the bank fairly reliable information can be gathered from its own records.

Thirdly, the question whether a banker should buy the commercial paper bearing certain names depends not only upon the credit of the parties but also upon the class to which the bills belong. For instance, the banker need not make thorough enquiries about the credit of the parties in case of documentary bills, to which documents of title to goods such as bills of lading, or railway receipts, insurance policies, and invoices, are attached, particularly when the goods concerned

are necessities of life. In case of dishonour of such a bill by the drawee or any difficulty arising in connection with the realisation of the amount from the drawer goods can be sold and the chances of loss to be borne by the banker are reduced. However, it must be remembered that such bills should not be purchased from parties whom the banker does not know well as there are certain risks attached to the business. For instance, the documents accompanying the bills may not be genuine or the goods may not correspond with their description given in the documents.

Fourthly, the banker should see that the bill is complete in every respect. Not only must its form comply with the requirements of law as explained in an earlier chapter, but also the bill must not be overdue or defective in any other way. In case the banker comes to know of the defect in the title of his customer to the bill he should refuse to discount it as then the banker cannot be treated as a holder in due course,\* and consequently his title to the bill will be rendered defective.

Penalty for  
failure to pay stamp  
duty.

Sec. 62 of the Indian Stamp Act,  
1899, lays down :—

<sup>1</sup> (1) Any person—

- (a) drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange (payable otherwise than on demand), or promissory note without the same being duly stamped ; or

<sup>1</sup> Negotiable Instruments Act, 1881, S. 9.

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped ; or

(c) voting or attempting to vote under any proxy not duly stamped ;

shall for every such offence be punishable with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under Sec. 35, Sec. 40, or Sec. 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty."

(2) "If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or the secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees."

Not only is it necessary to affix the stamps, but they must be so cancelled that they cannot be used again. This can be done by the drawer writing his name or the initials of his firm across the stamps and the true date of such signatures, or by any other effectual means, e.g., perforation. Merely drawing two parallel lines across the stamps does not suffice as the stamps can be used again. Failure to cancel the stamp effectually by a person who is by Sec. 12 of the said Act required to do so is penalised by Sec. 63 of the Indian Stamps Act, 1899, which permits the imposing of a fine up to one hundred rupees. As the Co-operative Societies are exempted from the provisions of the Stamp Act, the

Cancellation of stamps.



Registration Act, and the Income Tax Act, they are not required to pay the stamp duty on bills drawn by them. \*

Bills drawn in British India on parties out of British India are liable to duty under Sec. 17 of the Stamp Act, and this duty should be paid at the time of their execution, but bills issued in other countries on parties in British India must be stamped by the first holder in India.† There is an exception to this rule, *viz.*, in the case of bills drawn in Mysore and on which full stamp duty has been paid. Such bills are exempt in respect of their negotiation in British India, but not in respect of their presentment for acceptance or payment. When a bill issued out of British India is not stamped according to the law of the place, and which law, therefore, declares it void, it is perhaps void elsewhere. If such law entails penalties, then Courts in India will take no notice of them.

Bills of exchange and promissory notes in their relation to the stamp law differ from nearly all other instruments in that their stamping after execution is not valid. In *Dayaram Surajmal v. Chandulal*‡ the Bombay High Court held that where a hundi is affixed with one anna adhesive stamp, and the stamp is not

\* Co-operative Credit Societies Act, 1912, Sec. 28.

† 36 The stamp duty with which instruments executed on behalf of any registered Co-operative Society or by any officer or member of such society relating to the business of the society are chargeable, is remitted under Government of India Notification No. 683-F., of December 28, 1912 (published under Government Resolutions 1652 and 5989 of February, and June 27, 1913, Revenue Department). This exemption applies to all stamps on receipts, cheques, bonds, etc., but not to Court-fee stamps."—Ewbank's "Manual for Co-operative Societies in the Bombay Presidency." (Part IV (General) Chapter XXI, page 310).

‡ The Indian Stamp Act (1899), S. 19.

§ (1925) XXVII B.L.R. 1118.

cancelled at the time of execution but at a later date, the cancellation of the stamp is not valid and the hundi is to be treated as unstamped. Instruments which are not properly stamped are not admissible in evidence, except in a criminal court.

Sec. 35 (a) of the Indian Stamp Act, 1899, given below prescribes the penalties for instruments which are not duly stamped :—

Penalties.	<p>(a) "any such instrument not being an instrument chargeable with a duty of one anna or* (half an anna) only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;"</p>
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When a banker decides to discount a bill he will then credit his customer's current account with the amount of the bill less discount charged. The bill is then entered in the Bills Receivable Book and its date of maturity noted in the Bills Receivable Diary.

As we have already stated the general principles governing the presentment for acceptance, presentment for payment and the dishonour of bills, we propose to conclude this chapter by considering the liabilities of the parties to the bill.

Liabilities of the parties.	<p>The drawee of a bill after he has accepted it becomes the principal debtor, but till then the holder of a bill has no claim against him, and he should look to the drawer and the endorers of the</p>
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\* These words were inserted by Sec. 3 of the Indian Stamp (Amendment) Act, 1906.

bill for the payment of the same in case the drawee refuses to accept it. The drawer by drawing the bill undertakes that on its presentment it shall be duly accepted and paid according to its tenor. He also undertakes that in case of dishonour he will compensate the holder or any endorser who is compelled to pay it provided the necessary proceedings on its dishonour are duly taken. The endorsee by endorsing the bill attests that the bill when it left his hands was complete. The liability of the endorsers stands in the order in which their names appear on the bill. The first endorser is liable to the second and subsequent endorsers, the second to the third and the subsequent endorsers and so on.

## CHAPTER X.

### GUARANTEES.

When bankers' advances are not secured by means of collaterals and the personal security of the borrower is not considered adequate guarantees play an important part. The need for this form of security arises not only when an applicant for loan cannot offer any tangible security but also when the banker finds that his customer's position is weakened or the depreciation in the value of the collateral has resulted in the banker's advances being not fully secured.

Sec. 126 of the Indian Contract Act, 1872, defines a  
Guarantee e-  
fined. contract of guarantee as "a contract to perform the promise, or discharge the liability, of a third person in case of his default."

The same section further states that "a guarantee may be either oral or written." For instance, if Mr. S. P. Kapoor who wants a loan of Rs. 500 induces his friend Mr. M. N. Mehta to promise to Mr. B. D. Shroff to repay the loan in case of Mr. Kapoor's default the contract is called a contract of guarantee. It will be seen that there are three parties to this contract; Mr. S. P. Kapoor is the principal debtor, Mr. M. N. Mehta is the surety and Mr. B. D. Shroff is the creditor. In order to make the surety, Mr. M. N. Mehta, liable on his contract of guarantee, which itself is a contract of a secondary nature, there must be a principal contract by which the principal debtor, Mr. S. P. Kapoor, should promise to pay the amount to the creditor, Mr. B. D. Shroff. Unless there is such a contract there can be no default by Mr. Kapoor and therefore the contract of guarantee will fail. Under certain circumstances a surety is liable though the principal debtor is not. For instance, where the original contract is void as is the case of a contract with a minor the surety is

liable not only as surety but also as a principal debtor. In such a case the contract of the so-called surety is not collateral but a principal contract. It is not necessary that the principal contract must be in existence at the time the contract of guarantee is made ; the original contract by which the principal debtor undertakes to repay the money to the creditor may be about to come into existence.

Here it is necessary to draw the attention of the reader to another kind of contracts known as contracts of indemnity which appear at first sight to be analogous to contracts of guarantee. Sec. 124 of the Indian Contract Act, 1872, gives the following definition of a contract of indemnity :—

"A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity.' "

When the consignee of a cargo wants the steamship company to deliver the same without the production of the bill of lading he is required to give an indemnity bond by which he undertakes to compensate the steamship company for any loss which the company may have to suffer as a result of delivering the goods to him without the production of the bill of lading.

It will thus be clear that the guarantees differ from contracts of indemnity in that in the former case there must be two contracts, a principal contract between the borrower and the lender and a secondary one between the lender and the surety, whereas in the latter case there is only one primary contract. In the case of guarantees it is the principal debtor who is primarily liable and the guarantor's liability comes into existence only when the principal debtor

Guarantee distinguished from indemnity.

makes default. But in the case of an indemnity the promisor is the only person who becomes liable to the promisee if the latter suffers a loss on account of his entering into a transaction at the express desire of the former. In England, contracts of guarantee are required by the Statute of Frauds to be in writing though contracts of indemnity can be made orally. In India, however, contracts of both these kinds need not be executed in writing.

It does not appear quite necessary to make any detailed comparison between guarantees and other kinds of securities. Guarantees are accepted by bankers, firstly, because they are adaptable to different circumstances, actual and possible, and secondly, because they do not entail many positive obligations on the part of the banker. As an off-set to these advantages, however, it must not be forgotten that such a security is entirely dependant upon two things, firstly the initial and continued solvency of the surety, secondly the proper drafting or the completeness in form of the agreement itself. The banker has to satisfy himself about the initial and continued solvency of the proposed guarantor because there being no tangible security the loss in case of the debtor's default will have to be reimbursed by the guarantor.

No banker will ordinarily accept the guarantee of a person of whose credit he knows next to nothing. If a guarantee is to be of any real value the banker should make the necessary enquiries about the character and financial position of the proposed guarantor otherwise if the guarantor's financial status is unsatisfactory the contract of guarantee will be meaningless. If the guarantor is a customer of the banker, the latter's credit department will be in a position to report upon the financial position of the former, otherwise other sources of information may have to be resorted to. As a rule bankers are reluctant to accept the guarantees of persons with no other

Remedies for the apparent drawbacks.

means than fixed incomes terminating with death. However, if such a guarantee is to be accepted, it is very desirable for the banker to take out an insurance policy on the life of the guarantor. As to the second drawback, *viz.*, the possible loopholes in the form of the guarantee which are likely to allow the guarantor to evade his liability, it may be mentioned that as now-a-days almost every bank now has printed copies of its own guarantee form\* drafted by competent solicitors, no difficulty should arise on this score. Every provision contained in the form is inserted for a definite reason and it will be a blunder on the part of the banker to accept a guarantee which is not drawn up according to the approved form. The length and complicated nature of the document may be objected to on the ground that prolixity is no true test of efficiency but the banker will be well advised to safeguard his interests against all possible risks he may have to face. If he accepts a guarantee in the form of a simple letter the guarantor may have little difficulty in evading his liability. He may falsely accuse the banker of having varied the terms of the original contract in some way or other. Besides, it will be open to him to allege that the bank has taken a new security from the customer in lieu of the original one or that it has discharged the customer or a co-guarantor or that it has been guilty of negligence in perfecting securities charged to it by the customer. Where for some reason or other it is not possible to obtain the advice of a lawyer regarding the contract of guarantee or the banker has no printed form his own knowledge and experience would help him in making his legal position unassailable.

### **Who can enter into Contracts of Guarantee ?**

As already stated, contracts with minors and persons of unsound mind are void. It will, therefore, be clear that bankers should never accept guarantees of such persons. Although

Minors, lunatics & married women.	
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\*For a suitable form of guarantee, see Appendix A, Form No. 7.

married women can give valid guarantees which will bind their separate property such as *stridhan*, the banker is generally reluctant to accept their guarantees because if relations between the principal debtor and the guarantor become strained a married woman may declare that when she signed the contract she was not a free agent and acted under the coercion of her husband, particularly when he or his relative or friend happens to be the principal debtor. As generally Courts have a tender heart towards the fair sex the above plea is likely to be successful even though the evidence in support of the same may not be so convincing as it would be required in other cases. Consequently, wives becoming surety for husbands, expectant heirs for their fathers or in other cases where it is likely that undue influence may be at work are exceptional instances in which the banker should be particularly careful.

A partner has no implied powers to bind his co-partners by entering into a contract of guarantee in the firm's name, unless the ordinary business of the firm is such as may require the making of such contracts. Therefore in the case of a guarantee by a firm it is desirable that either the partner signing on behalf of the firm should have express authority to bind the firm by such contracts or all the partners should sign the contract of guarantee.

As regards the powers of a company registered under the Indian Companies Act, 1913, to make contracts, it has already been stated that such powers depend upon the company's Memorandum and Articles of Association. No doubt certain other powers are inferred, which can be exercised according to the Articles of Association, as in the case of most companies the Memorandum, after setting out in details the various objects of the company, winds up with the general clause empowering the company to do "all acts and things incidental to the carrying out of its objects." In the case of a trading company the



ordinary commercial transactions requisite for the proper conduct of its business are impliedly within its powers even if they are not expressly provided for in the Memorandum. However, to imply a power to borrow money for the purpose of the company's own business is a very different thing from implying a power to guarantee advances to other peoples even when they happen to be customers of the guaranteeing company. A power to give guarantees would not easily be inferred especially when the Courts are jealous of the doctrine of the implied powers and will not readily read such a power into the company's constitution unless, taking into consideration the nature of the business of the company, they are satisfied as to its need. However, the best legal opinion on the point is that a company cannot stand as surety unless it is expressly authorized by its Memorandum and Articles of Association. *In re. Friary Holroyd and Hooley's Brewery Ltd. v. Leckham*\* where a company had power by its Memorandum to "subsidise or otherwise assist" any person or company with whom it had business dealings, it was held to have power to guarantee the debentures of another company. However, such powers must be exercised for the benefit and the purpose of the company.

Before accepting the guarantee of a registered company the banker should also satisfy himself that the company is duly registered according to the requirements of the Indian Companies Act as otherwise the banker's security in the event of liquidation, is void against the liquidator and the creditors of the company and the guarantee practically useless as a security. Where a company resorts to borrowing in order to obtain the capital which should properly be furnished by its shareholders, a lender saddles himself with a permanent advance. It is not uncommon that a one man company is registered as a limited company only that the

Joint Stock companies as guarantors.

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\* October 26, 1922, Chancery Division, T.L.R.

promoter may not risk his private means. In receiving debentures as security a banker will be well advised to make the advance by way of loan. When a company experiences a setback and the banker has already accepted its guarantee he becomes involved in risks when the borrower is unable to meet his liability. He may consequently decide to take a debenture covering the company's assets, but should a winding up ensue within three months of the issue, the debentures so far as the floating charge is concerned, are invalid, except to the extent of fresh advances made by way of consideration, unless it can be proved that the Company was solvent immediately after the creation of the kind. Where a company guarantees another company's debentures then in the event of the debtor company winding up its business, the preference shareholders of the guarantor company, who are entitled to a preference on assets for the amount of their shares over holders of ordinary shares, would find themselves unjustly postponed to the extraordinary obligation of the guaranteed debt for the benefit of another company. Where a company enters into a contract of guarantee in respect of an *ultra vires* borrowing by another company the guarantee cannot be enforced which is not at all in the interests of a bank which has inadvertently allowed a company to borrow *ultra vires*. It is, therefore, desirable that bankers should not generally accept the guarantees of registered companies unless their Articles of Association contain express powers for the purpose. It would be an advisable precaution on the part of the shareholders to question what benefit the company standing as surety is going to receive, or what consideration the guaranteeing company gets for undertaking the liability.

### Consideration.

The contract of guarantee like other contracts is required to be supported by consideration. Consideration for a guarantee

is defined by Sec. 127 of the Indian Contract Act as follows:—

“Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.”

Thus, it will be clear that it is not necessary that consideration should imply necessarily something  
 Its meaning.                      done for the benefit of the guarantor but anything done for the benefit of the principal debtor is considered as an adequate consideration for the guarantor to make the contract valid. For example, if Mr. Hiralal asks Mr. Kashinath (the creditor) to forbear to sue Mr. Zutshi, the principal debtor, for a certain period and promises that if Mr. Kashinath does so Mr. Hiralal will pay the amount in case of the default of Mr. Zutshi, the forbearance on the part of Mr. Kashinath would be a consideration for the guarantee. However, if Mr. Hiralal instead of asking Mr. Kashinath to forbear to sue Mr. Zutshi asks Mr. Kashinath to withdraw a criminal proceeding against Mr. Zutshi, but the Court refuses to grant the necessary permission the consideration will fail and therefore Mr. Hiralal will not be liable to Mr. Kashinath.

Whether or not the contract of guarantee is one which is generally termed by the lawyers as  
 Contracts of guarantee                      not *uberrimæ fidei*, i.e., one in the carrying out of which the utmost good faith must prevail, has been a stumbling block even to classical legal authorities. On the one hand it is argued that it is unnecessary for a bank—apart from participation in fraud—to volunteer any disclosure as to the state or history of the account, or its knowledge of the debtor's financial position or commercial credit, however important it may be for the guarantor to know the things. In a recent Madras High Court Appeal Case\* it was held that the bank was under no obligation to volunteer to a surety any information as to the

\* *Imperial Bank of India v. Avanas Chettiar*, (1930) 53, Mad. 826.

principal debtor's past indebtedness, when the surety did not ask any information on the point. Indeed, the probable reason for requiring a guarantee is dissatisfaction with the principal debtor's credit. On the other hand there are those who uphold the view that under exceptional circumstances the banker is bound to furnish information. He must not conceal from the surety any secret arrangement he may have between himself and his customer which is inconsistent altogether with the contract the surety is to sign. If a surety asks relevant questions affecting the transaction a banker has to answer them before the signing of the contract. Even during the continuance of the contract of suretyship a guarantor may approach the banker and ask information regarding the extent of his liability on account of the guarantee given by him. However, this does not mean that the banker should forget his duty of observing secrecy with regard to his debtor's account. It has never yet been held by any Court, at least to the present author's knowledge, that it is within a banker's right to discuss even with a surety the operations of the account and customer's business. According to the decision in *National Provincial Bank v. Glauusk*\* the non-disclosure by the bank to the guarantor of their customer's overdrawn account of facts which led the bank to suspect that the customer was defrauding the guarantor did not invalidate the guarantee as the bank owed no duty to bring its suspicions to the surety's notice. However, if questioned by the would-be surety he must give the requisite information honestly and to the best of his ability, the occasion justifying even the disclosure of the customer's account, as 'very little said which ought not to have been said and very little omitted which ought to have been said may suffice to avoid the contract.' Even on these occasions a banker can never be too careful while giving the essential information as there is in all cases a real risk of misrepresentation. "Least said, soonest mended," would be a good motto

for a banker in interviews relating to proposed surety transactions.

Effects of misrepresentation or failure to disclose material facts.

The Indian Law on the effect of misrepresentation or failure to disclose material facts in obtaining a guarantee is given in Secs. 142 and 143 of the Indian Contract Act.

Sec. 142 lays down : " Any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge or assent concerning a material part of the transaction is invalid."

Sec. 143 runs as follows :—

" Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid."

As complete accord between the parties to a contract is necessary it must be evident that no such accord can exist when the guarantee is obtained by means of misrepresentation regarding a material part of the transaction. Although it may be assumed that bankers in modern times are not likely to state deliberately what they know to be false or to wilfully create any false impression on the mind of a proposed surety, it is quite possible that a misrepresentation may be made inadvertently which may give the surety a chance to avoid his contract. It may, therefore, be stated that in any discussion or negotiation with the surety the banker should not say anything even casually that would mislead the would-be surety. The following illustration will make clear the effect of an inadvertent statement. In the old case of *Stone v. Compton*,\* the defendant joined as surety for the bank's customer in a promissory note for £ 2,000. The bank took also a mortgage for the advance. At the time of the advance the customer was

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\* (1838) 5 Bing. New Cases 142.

already indebted to the bank to the extent of £ 800, but in the mortgage deed there was a recital stating untruly that the sum of £ 800, had in fact been paid. The deed was read over by the bank's representative to the surety. The Court held that the untrue recital so read over to the guarantor vitiated the contract of guarantee. As an instance of misrepresentation by concealing a material part of the transaction we give the following extract from the judgment of Warrington J. in *Hewaston v. Webb*\* where the misrepresentation was only as to the contents of a deed known by the defendant to deal with his property: *non est factum* was held to be no defence. Justice Warrington said, "I have had no case cited which carries the plea further than that a misrepresentation as to the nature and character of the document avoids it."

Unlike contracts of insurance the idea of utmost faith is not, as already stated, the basis of the contract of suretyship as regards the duty of disclosure. There does not appear to be any material difference between the English Law and the Indian Law as regards the effect of concealment of fact on guarantees, although the language of Sec. 143, Indian Contract Act, might give the impression that an unqualified duty of giving to the guarantor complete information regarding all the material facts is imposed upon the creditor. The following illustrations will make the position clear to the reader:—

If Mr. Bhattacharya, a banker, engages Mr. Gupta as a cashier who subsequently fails to account for some money received by him on behalf of his employer and is therefore called upon to find surety for his proper rendering of accounts of the money to be received by him and Mr. Deshpande gives the guarantee at Mr. Gupta's request

Illustrations.

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\* (1907) 1 Ch. 577.

the guarantee will be held invalid in case of Mr. Bhattacharya's failure to acquaint Mr. Deshpande with Mr. Gupta's previous conduct. Similarly, if at the request of Mr. Currimbhoy, Mr. Laljee gives a guarantee for the existing and future liabilities of Mr. Currimbhoy to Mr. Peerbhoy up to a certain sum which is already exceeded the contract of guarantee will be voidable on the ground of concealment of a material fact unless the creditor informs the surety of the fact before he signs the contract of guarantee. However, it should be stated that it is no part of a banker's duty to volunteer a full and detailed disclosure of his previous dealings with the debtor. In *Wythes v. Labouchere*\* Lord Chancellor Chelmsford speaking of the creditor said, "He is not bound to inform the intending guarantor of the matters affecting the credit of the debtor or to any circumstances unconnected with the transaction in which he is about to engage which will render his position more hazardous."

### Scope of Guarantee.

In determining the scope of guarantee, two important points arise :—

- (1) Is the guarantee a *specific* one, that is, one intended to apply to a particular debt, or a *continuing* one which extends to a series of transactions between the banker and his debtor? In case of a specific guarantee, the guarantor's liability will cease as soon as the particular advance or advances are paid. For instance, if Lala Balak Ram wants to borrow a sum of Rs. 500 from the Central Bank of India Limited, and Lala Ram Saran gives a specific guarantee, he will not be liable if Lala Balak Ram pays back the amount borrowed and takes a fresh loan from the bank. On the other hand, if the guarantee is to be a continuing one, the guarantor will be liable for the balance irrespective of the payments made by the principal debtor, as they would go towards the payment of

\* (1858) 3 De. G. & J. 593.

earlier advances. For this reason bankers always prefer to have continuing guarantees so that the guarantor's liabilities may not be limited to the original advances but should also extend to all subsequent debts. This would ensure safety for the banker as otherwise he would be running a risk if he has inadvertently allowed the principal debtor an overdraft.

(2) Where the guarantee applies to the whole debt, which exceeds the amount of the guarantor's liability, the banker after the failure of the principal debtor can claim from the guarantor the maximum amount guaranteed by him and place the same to the credit of suspense account and prove his claim for the whole debt against the estate of the debtor. The dividends received from the debtor's estate can be credited to the debtor's account and the amount received from the guarantor can be transferred from the suspense account to the debtor's account. In case there is a surplus it is returned to the guarantor. For instance, if Mohan Lal guarantees advances made to Ratan Chand by the Yokohama Bank Ltd., but limits his liability to Rs. 1,000, and if on the failure of Rattan Chand it is found that he owes Rs. 2,000, the bank will call upon Mohan Lal to pay Rs. 1,000. It can then prove its claim against its debtor's estate which pays a dividend of annas 8 per rupee. The bank will receive Rs. 1,000, from the estate and this amount together with the amount received from Mohan Lal will satisfy its claim. Thus, Mohan Lal, the guarantor, will suffer a loss of Rs. 1,000. However, if the guarantee is applicable only to a part of the debt, the guarantor on the payment of the amount of his liability to the banker can stand in the shoes of the banker to the extent of the amount paid by the guarantor and prove his claim against the estate of the debtor. Thus in the illustration given above if the guarantee applies to half the amount of the debt, Mohan Lal on paying the amount of Rs. 1,000 to the Yokohama Bank Ltd.,



will be entitled to prove his claim against the estate of Rattan Chand and will receive Rs. 500. In this case the Yokohama Bank Ltd., will be entitled to prove its claim for Rs. 1,000 only against the estate of Rattan Chand and will thereby lose Rs. 500. Moreover, it should be noted that this limitation should apply to the extent of the guarantor's liability and not to the amount to be advanced, because in the latter case the guarantee may be totally invalidated if a sum exceeding the amount mentioned in the contract of guarantee is lent. For instance, if the guarantee is worded as follows:—"In consideration of your advancing to A. B. Yusafalli a sum not exceeding Rs. 500 I guarantee the payment of that amount," and if a sum exceeding Rs. 500, is advanced to A. B. Yusafalli, the guarantor may escape his liability on the ground that the condition laid in the contract of guarantee is not fulfilled by the banker.

Having considered the fundamental principles which govern contracts of guarantee it is desirable to state clearly the obligations and rights of the (creditor) banker as well as those of the surety.

### **Obligations and Rights of the Banker.**

In the absence of an agreement to the contrary the banker must not, without the surety's consent, vary the original terms of the contract between himself and the principal debtor as it will discharge the surety with respect to the transactions after the change of terms.\* For instance, A guarantees B's conduct as a cashier in C's Bank. Afterwards B and C contract without A's consent that B's salary shall be raised by Rs. 100 a month and that he shall become liable for one-fifth of the losses on overdrafts. If the bank suffers a loss on account of an overdraft, A will not be liable to make good the same. Under the English Law the variation of the terms without the consent of the surety is

Not to vary the original terms.

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discharge the surety with respect to the transactions after the change of terms.\* For instance, A guarantees B's conduct as a cashier in C's Bank. Afterwards B and C contract without A's consent that B's salary shall be raised by Rs. 100 a month and that he shall become liable for one-fifth of the losses on overdrafts. If the bank suffers a loss on account of an overdraft, A will not be liable to make good the same. Under the English Law the variation of the terms without the consent of the surety is

\* Indian Contract Act, 1872, Sec. 133.

permitted as long as the surety's interests are not prejudiced. However in India bankers take specific powers from the guarantors to vary the terms of the contracts between themselves and their principal debtors and thus their rights against the sureties are not affected.

The banker should not release the principal debtor or do any act or be guilty of an omission the legal consequence of which is the discharge of the principal debtor.\* For instance, A guarantees a loan granted to B by C and afterwards B becoming embarrassed contracts with his creditors including C to assign to them his property in consideration of his release from their demands. A is discharged from his suretyship on the ground of C having released B.

The banker must exercise reasonable care in his dealings with the debtor so as not to prejudice the position of the surety who is sure to escape liability when the banker, unless he is allowed to do so by contract of guarantee, has effected even a slight variation in the conditions of the contract of guarantee. Where there are co-sureties, a release by the banker of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.† This is so, because an undue preference given to the discharged surety is bound to affect the other sureties adversely. Moreover, the surety, although released by the banker, is liable to his co-sureties to the extent of his share.

Any negligent or improper handling by the banker of the securities belonging to the debtor which reduces their value will diminish the liability of the guarantor to the extent to which the securities depreciate, unless there is a clause

\* Indian Contract Act, 1872, Sec. 134.

† Indian Contract Act, 1872, Sec. 138.

in the contract of guarantee allowing the banker to deal with the securities as he may think fit. Similarly, if the banker holds some securities belonging to the principal debtor he should not return them either wholly or partially to the principal debtor as thereby he will prejudice the interests of the surety.

Another example of an obligation which is imposed upon the banker is to be noticed in the rule which prevents a creditor from giving any indulgence to the debtor unless the same is provided for in the contract of guarantee or is assented to by the surety. If the banker enters into an agreement whereby he forbears or extends the time of payment, the surety will be discharged from his liability.\* The principle underlying this rule is that if the banker extends the time of repayment the financial position of the principal debtor may become so bad that the chances of the recovery of money by the surety, who is liable to the banker, may become minimised or totally extinct. There is also the chance of the principal debtor's insanity or death. However, mere forbearance on the part of the banker to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision to the contrary in the guarantee, discharge the surety.† The banker will be well advised to add to the terms of the contract of guarantee a provision allowing him to grant time to the debtor if the former thinks it necessary.

(a) The banker can exercise his right of lien on the balance of the account of the guarantor in his possession in spite of the fact that his claim under the guarantee is time-barred. However, it should be noted that his right to exercise a general lien does not arise until default has been made by the principal debtor in which case the

\* Sec. 135, Indian Contract Act, (1872).

† Sec. 137, Indian Contract Act, (1872).

banker should immediately inform the guarantor that the former has exercised his lien on the latter's money or securities deposited with him. A banker is not, however, bound to sue the debtor before claiming the amount from the guarantor.

(b) According to Sec. 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract of guarantee. For instance, if Mr. Ghaznavi has guaranteed the payment of a bill of exchange accepted by Mr. Ali, the former will be liable not only for the amount of the bill but also for any interest and charges that may become due on the same. "I entertain no doubt that a party who guarantees the payment of a bill is liable for all that the principal debtor would be liable for."\*

(c) In the event of the bankruptcy of the surety the banker is entitled to prove his claim against the estate of the surety. When the banker hears of the death or bankruptcy of the surety he should close the account guaranteed by the person and if the principal debtor makes a default in the payment of the amount the banker should at once claim the amount from the legal representative of the deceased or from the Official Receiver of the bankrupt surety.

The proverbial litigation attendant upon the guarantees is perhaps due to the popular belief that the signing of a contract of guarantee is nothing more than a 'mere formality.' In fact, there was much truth in the pompous Wilkins Micawber's definition of guarantee in Dickens's masterpiece novel *David Copperfield*, when he said in his usual oratorical manner, "A guarantee is where one man that can't pay gets another man that can't pay to say

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\* P. Pollock C.B. at p. 103.

he will." Rather cynical, but nevertheless true. However, in the face of several religious warnings in the Holy Bible against the risks of suretyship, persons from motives which do credit to their kindly nature, do enter into contracts of suretyship without taking thought for the morrow and the possibility of their being called upon to discharge the liability. They usually forget the Son of Sirach's advice "Be not surety above thy power. And if thou be surety take thought as one who will have to pay." It is easy to put one's pen to paper and complaisantly append one's signature to a contract of guarantee but to be compelled to put one's hands into one's pockets or loosen the strings of one's purse when the fruit of the friendly act is demanded, is usually an unexpected and painful experience. Even when the eventual liability occurs to him, the surety generally imagines that he will be called upon to pay only when all means of compelling the debtor to pay have been exhausted. However, a strange disillusionment comes, when the debtor's business suddenly collapses leaving practically no assets. It is as a remedy for the harrassments resulting from this popular fallacy that the bankers always insist on getting the contracts signed on their printed guarantee forms with practically no loophole to enable the guarantor to escape liability.

Usually the bankers require the guarantors to execute the guarantee in the bank manager's presence. It is not advisable to allow the customer to take the guarantee form away and himself obtain the signature of the guarantor thereto. This is because, firstly the guarantor's signature may turn out to be a forgery or he may later on allege that he signed in ignorance of the nature of the document, and secondly the guarantor when called upon to discharge his obligation, may put forth the plea that he signed under a misrepresentation made by the man to whom the bank entrusted the document to obtain the guarantor's signature.

Advisability of getting the contract of guarantee signed in the bank manager's presence.

**Rights of the Surety.**

As the completeness of the guarantee form used by bankers gives them the maximum of freedom and leaves for the guarantors practically no scope for evading liability when the principal debtor defaults, some people are led to believe that a person who has signed the common form of bankers' guarantee has no rights to speak of. Although it is true that bankers' guarantees provide for themselves the maximum freedom of action and hardly any rights for the guarantor a surety unless he surrenders by express agreement is given by law the following rights:—

In the first place a surety can, during the continuance of the guarantee, ask the banker for particulars of the extent of his liability, and the banker is bound to supply the necessary information, but he should do so with all possible care without committing himself in respect of other details relating to the contract. It does not, however, mean that the guarantor can expect the banker to withdraw immediately the facilities provided by him to the principal debtor on the basis of the guarantee without giving notice for a specific period, because the customer, who may have entered into business dealings and contracts upon the faith of guarantee, may suffer in his credit. However, if the bank takes advantage of the interval to make new and purely voluntary advances it would not be acting equitably towards the guarantor. For example, if a father guarantees an overdraft to his son studying at a college and the latter taking an undue advantage of the opportunity begins squandering money on luxurious living, the former can ask the bank to pay no more cheques drawn by the latter. If the bank declines to accede to this request and points to the three months' notice clause in the guarantee signed by the father, the guarantor of the overdraft, it would not be acting equitably towards him.

Surety can call for the particulars of the extent of his liability.

As regards the surety's right to revoke or withdraw the guarantee, it may be stated that it will  
 Revocation. depend upon the nature of consideration.

If the consideration for a particular guarantee is to forbear to sue for a debt already owing from the principal debtor the guarantor cannot evade his liability by revoking the contract of guarantee. Even when the liability of the customer for whose benefit the guarantee is given is contingent, as may be the case when the banker according to the terms of the contract of suretyship discounts a bill of exchange for the customer or issues a letter of credit in his favour, the guarantor's liability will continue so long as the customer to whom the credit facility is granted remains liable to the banker, though contingently, on the instrument. Even when loan account of the principal debtor has been debited and his current account credited the banker on receipt of the notice of revocation from the guarantor cannot close the customer's current account and dishonour his cheques drawn against the balance.

In the absence of any stipulations to the contrary regarding the notice, a continuing guarantee can  
 Termination of a continuing guarantee. be determined at any time. Upon the receipt of notice from the guarantor the banker should communicate it to the customer and close the account so as to prevent the operation of the rule in *Clayton's Case* according to which every payment subsequent to the receipt of notice for termination of the guarantee by the banker, unless appropriated otherwise, will go to the reduction of the amount for which the surety is liable. However, he will not be liable for any subsequent debit item as the same will be treated as a new advance. It is generally believed that a banker who honours outstanding cheques after the expiry of the period of the notice agreed upon does so at his own risk. This risk is generally avoided by bankers by having in their guarantee forms an express provision by which the guarantors undertake to give notice for

specified periods before terminating their liability on the guarantees. Even in such cases the difficulty arises whether or not a banker can safely allow the customer to draw on the account to the maximum amount of the guarantee. As regards the honouring of outstanding cheques and bills accepted on behalf of the customer before receipt of the notice, there seems to be no doubt that the guarantor cannot raise any valid objection. It also appears reasonable that the banker is justified in completing during the currency of notice other transactions, in the ordinary course of business, begun prior to revocation.\*

In the absence of an express undertaking to the contrary the death of the surety revokes the guarantee so far as transactions taking place after the death are concerned. However, as stated above bankers by having in their guarantees a clause requiring sufficient notice to be given by the guarantor during his life-time and by his legal representatives after his death, before terminating the guarantees, are able to safeguard their interests.

The surety on the payment of the amount due to the creditor succeeds to all the rights and equities of the latter. He "is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not, and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.†" However, in case the guarantee is applicable to the whole of the debt but limits the guarantor's liability to a specified amount, the surety can neither claim a proportionate part of the securities

\* Journal of the Institute of Bankers, May 1909, p. 329.

† Indian Contract Act, 1872, Sec. 141.



in the hands of the banker nor prove his claim against the debtor's estate for the amount paid by the guarantor unless the creditor's claim against the debtor is fully discharged. However, when the liability to the banker is fully discharged he is bound to hand over any surplus remaining in his hands to the surety, or if there be more than one to each of the sureties in proportion to the liabilities discharged by each of them. In case the guarantee is applicable only to a part of the debt the surety on the payment of the amount due can claim a proportionate share in the securities held by the banker on account of the debtor and in case of the latter's insolvency can prove his claim against his estate. A banker's guarantee is usually applicable to the whole debt and contains a provision by which the surety expressly declares that he will not compete with the banker in event of the bankruptcy of the principal debtor or claim any securities the banker may hold, until the whole of the debt due to the banker has been paid.

Generally, before paying the amount demanded by the banker, the surety sends a notice to the principal debtor of his intention to satisfy the banker's demand. The surety on making the payment to the banker can claim the amount from the principal debtor, but he cannot make any profit out of the transaction. For instance, if he persuades the creditor to give up either the whole or a part of the interest due the surety cannot claim the same from the principal debtor. In the event of the bankruptcy of the principal debtor the surety may prove in respect of his contingent liability in case he has not been called upon to pay any definite amount. In case of a joint guarantee the sureties have certain rights *inter se*. As they share the liabilities they have also in equity the right to share the means of recoupment. Thus if they are liable in equal amounts they will be entitled to share equally the

Surety's right  
against debtors  
and co-sureties.

securities belonging to the principal debtor in the possession of the banker. In case their liabilities are unequal they will share the securities rateably. If any one of the sureties has to pay more than his share, he has a right to call upon his co-sureties for such contributions as will enable him to recoup himself to the extent of the excess amount paid by him over his proportionate liability. A co-surety has also the right to the benefit of a counter-security given to another surety by the principal debtor. In *Steel v. Dixon*,\* it was held that a surety who had obtained from the principal debtor a counter-security for the liability he had undertaken, was bound to bring into hotchpot, for the benefit of his co-sureties, whatever he received from that source, even though he had consented to be a surety only because of the counter-security, and the co-sureties were, when they entered into the contract of suretyship ignorant of his agreement for the same. It may also be stated that the period of limitation as against the debtor will begin to run from the date of the discharge by payment by the surety to the creditor.

Surety's right to  
be discharged.

The surety is entitled to a complete  
discharge in the following cases :—

(1) *If the creditor discharges the principal debtor.*† The principle underlying this rule is that if the principal debtor is discharged by the banker, the surety making the payment to him will not be able to claim the amount from the principal debtor. It may also be said that as the debt due from the customer is extinguished by his discharge and as the principal contract becomes cancelled, the contract of guarantee also *ipso facto* will cease to exist.

(2) *If the creditor without the consent of the surety makes a composition with, or promises to give time to, or not to sue the debtor.*‡ The effect of giving time to the debtor

\* (1881) 17 C.D. 825.

† Indian Contract Act, 1872, Sec. 134.

‡ Indian Contract Act, 1872, Sec. 135.

has already been discussed above. When a creditor accepts a smaller amount than the amount due from the principal debtor in full payment of the debt due, he cannot be allowed to claim from the guarantor, the difference between the amount due and the amount received from the debtor. Similarly, when a banker without the consent of the surety undertakes not to sue the principal debtor his forbearance releases the surety.

(3) *If the creditor does something which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do and thereby the eventual remedy of the surety against the principal debtor is impaired.\** For instance, A enters into a contract to build a house for C for a certain sum to be paid by instalments as the work reaches certain stages. B becomes guarantor for A's due performance of the contract. C without the knowledge of B prepays the last three instalments. B is thus discharged from his liability.

Before we conclude the chapter it is desirable to state that in addition to the points explained above, and those about which the contract of guarantee should be very clear it is necessary that provisions for contingencies such as the absorption or amalgamation of the lending banker with another bank should be expressly made in banker's guarantees. Similarly, where the account or loan guaranteed is that of a partnership the guarantee should have a provision to the effect that any change in the firm will not affect the guarantee. It must also be remembered that any alteration made in a joint or a joint and several guarantee must have the consent of all the co-sureties.

Precautions for  
certain other con-  
tingencies.

\* Indian Contract Act, 1872, Sec. 139.

## CHAPTER XI.

### ADVANCES SECURED BY COLLATERAL SECURITIES.

We have so far dealt with banker's advances which are made either on the mere personal security of a borrower or on his personal security coupled with that of one or more other persons. We have seen that in the case of loans secured by guarantees the guarantor usually does not pledge any tangible security but merely promises to pay the amount due from the principal debtor if the latter fails to do so. The same is true of clean bills where the acceptor of a bill is the principal debtor and the drawer and endorsers are more or less like sureties. Although bankers do not mind investing considerable amounts in the discounting of commercial bills they are very reluctant to make unsecured loans and generally insist upon some collateral security to back them. It is therefore necessary to consider their position as far as these secured loans are concerned.

Bankers usually secure their advances by stock exchange securities, bullion, goods, documents of title to goods, immovable property, ships and other miscellaneous securities such as life policies and accounts receivable. Before considering these securities it will perhaps be necessary to make some general observations.

It is necessary, in the first place, to distinguish between a lien, a pledge and a mortgage, the three different forms in which securities accepted by bankers as covers for their advances are charged. We have already explained the meaning of the banker's lien. It will be sufficient to state here that the banker's lien does not transfer the property or right of ownership in the securities subject to lien and generally does not confer upon him the power of sale. Moreover, a lien cannot be transferred. In the case of a

Different kinds  
of collateral securi-  
ties.

Lien, pledge or  
mortgage.

pledge the right of ownership continues in the pledgor, but the pledgee is entitled to the exclusive possession of the property as well as the right to sell the same in certain circumstances. There is also the further advantage in the case of a pledge that it is not necessary that the property must belong to the pledgor. It does not matter if the latter has pledged the property without the consent of the owner provided the pledgor was in possession of the property with the owner's consent. The transfer of the property may be actual or constructive as is the case when the key of the godown in which goods pledged are stored is transferred to the pledgee. Thus, it will be clear that the pledgee is in a slightly better position than a person entitled to a general lien. In the case of a legal mortgage of chattel, ownership of the property mortgaged passes to the mortgagee with the condition of its re-transfer to the mortgagor on the payment of the mortgage money together with interest and other charges. The mortgagee has the right of sale but the possession of the property need not change. The question whether a banker should be satisfied with a lien, pledge or mortgage depends upon the nature of the securities and the circumstances under which they are offered.

### **Margin.**

As the prices of the bulk of securities are liable to fluctuations which vary according to the nature of the securities and as the amount of the money owing to the banker is likely to be increased by the interest and other charges payable, it is evident that no banker should advance an amount equal to the full market value of the securities offered. If they are among the 'wall flowers' of the market which generally sit out and seldom take part in the dance in the middle of the market floor, bankers accepting them sometimes find it to their cost that the official quotations of such securities are much higher than the prices at which they can be actually sold. It is therefore necessary

that the lending banker should insist upon getting securities worth more than the amount of the loan or overdraft agreed upon. This difference between the market value of the securities and the amount lent against them is known as the *margin*.

The margin depends upon the class to which the securities offered belong and to a certain extent upon the credit of the customer. For instance, in the case of an advance against gold bullion, a banker in normal times may be satisfied with a margin of five per cent. as the price of gold in gold standard countries is ordinarily very steady. However, when the price of gold fluctuates a great deal, as it happened in the first six months of 1920 and as it has been the case since the crisis of September 1931, a larger margin than five per cent. has to be insisted upon. Similarly, as the price of silver is liable to greater fluctuations than that of gold a banker may have to demand a margin of 10 to 15 per cent. In a silver standard country, *e.g.*, China the position is perhaps just the reverse of that stated above, and therefore a banker in that country will be satisfied with a smaller margin in the case of silver than that in the case of gold. In normal times, in the case of gilt-edged securities a margin of 10 per cent. is generally considered ample as they fluctuate within very narrow limits. Shares of feeder railway companies which are considered a good security call for a margin of 20 to 25 per cent. Similarly, for the shares of the Imperial Bank of India, a margin of 20 to 30 per cent. is generally believed to be adequate.

In the case of shares and stocks of industrial concerns the position varies a great deal. For instance, the debenture stocks of good industrial concerns rank much higher than their shares as security for advances. Similarly, their preference

Margin for  
precious metals  
and gilt-edged  
securities.

For industrial  
securities.

shares are considered better than their ordinary shares. The margin in such cases will depend upon the position of the company. The shares of a mining company which has not paid any dividend for several years may not be a good security even if a margin of 50 per cent. is offered.

In the case of goods and documents of title to goods the margin varies more or less according to the extent to which their prices are liable to fluctuations. For instance, if the goods offered as security are staple commodities such as cotton, wheat or sugar the prices of which are generally steady, the banker may consider a margin of 25 per cent. as ample. Here again we must remark that there can be no fixed margin even for such commodities. A great deal depends upon the conditions of the market for the particular goods offered. If the goods are of a perishable nature the banker should accept them only if they are readily saleable and if the advances against them are not for long periods. If the goods offered are articles of luxury the prices of which are liable to variations on account of changes in fashion etc., the banker should be very reluctant to accept them even if a margin of 40 to 60 per cent. is offered.

As a commercial bank borrows funds which are repayable on demand or at short notice it cannot afford to lock them up for long periods. It is therefore necessary that when a customer applies for a loan against the deposit of some securities it is for the banker to consider whether he will be in a position to realize the loan when he finds it necessary to do so.

Although the law does not require the agreement of pledge or mortgage of moveable property, such as stock exchange securities, goods, etc., to be in writing as a mere deposit of securities or goods with the intention to create a charge on them is considered quite sufficient, it is, however, customary with all

banks to get such agreements signed by their customers. This practice has several advantages. Firstly, if the terms of an agreement are committed to writing it will minimise the chances of a misunderstanding of the terms between the banker and his customer, as the agreement will state clearly the liabilities which are to be covered by the security. Secondly, the banker's Memorandum of Deposit contains useful provisions in his favour. For instance, the mere deposit of stock exchange securities as a cover for advance will create only an equitable charge on them, and it should be remembered that the banker does not thereby get the power to sell those securities unless such power is given by the agreement. Thirdly, the agreement provides an undertaking on the part of the borrower to maintain the margin agreed upon failing which it authorises the banker to sell the securities. Fourthly, the agreement also provides that the securities or goods charged will be deemed to be a security for the payment by the customer of the balance due ultimately on the closing of his account or accounts with the banker. This will prevent the application of the rule in *Clayton's Case* which otherwise might prejudice the rights of the banker. Lastly, the agreement also invariably contains a declaration by the customer that he has a good title to the particular securities deposited and can therefore charge them. If the securities offered do not belong to him such a statement will most likely incriminate him and thus he will be discouraged from giving himself out as their lawful owner when there is some defect in his title to such securities.

We have already stated that generally a mere lien gives no power of sale of the securities and the only way of realising them is to file a suit against the customer and then have them sold in execution of the decree. However, where the rules of the stock exchange attach a power of sale to the lien such a

Realisation of securities.



power can be exercised. The pledgee of the security on the other hand has in any case, the power to sell them on default of the pledgor. *In re Morrit Cotton*,\* Lords Justices Lindley and Bowen said, "a contract of pledge carries with it the implication that the security may be made available to satisfy the obligation, and enables the pledgee in possession (though he has not the general property in the thing pledged, but a special property only) to sell on default in payment and after notice to the pledgor, although the pledgor may redeem at any moment up to sale."

When a debt payable on a fixed date remains unpaid on the date, the debtor is said to have defaulted. Default and notice. However, from the extract given above it is apparent that ordinarily notice to the pledgor of the pledgee's intention to sell the securities, if the amount due remains unpaid by a certain time, is necessary. Where no date is fixed for the repayment of the loan a notice demanding payment within a reasonable time and informing the pledgor that in case of his failure to repay within that time the securities pledged will be disposed of, is sufficient. The reasonable time in such cases is to be determined according to the circumstances of each case. If the prices of the securities pledged are falling rapidly and the customer fails to maintain the promised margin, a short notice will be regarded as quite adequate. On the other hand, if the security to be sold is real property generally a longer notice is given. However, in actual practice as bankers reserve for themselves very wide powers, no great difficulty arises on this score.

### **Advances against Stock Exchange Securities.**

Having explained the important general principles governing secured advances we shall first of all consider those secured by stock exchange securities. This term in its strict sense is

\* (1886) 18 Q.B.D. 222.

used for bonds, shares, stocks, debentures and scrips issued by governments, public bodies, joint stock companies and corporations in which dealings take place on the stock exchanges. Advances against these securities form an important part of the loans made by commercial banks in large cities which have stock exchanges, not only on account of the finance required by speculators for the purchase of such securities as are likely to appreciate, but also because these securities are held in large blocks by businessmen in such cities because moneys invested in them can be easily realised in case of need. Moreover from the point of view of the bankers also they compare favourably with certain other securities.

In the first place as compared with guarantees, stock exchange securities are generally more reliable because a banker advancing moneys against them gets something tangible while in the case of guarantees he has to rely entirely upon the solvency of the surety for the recovery of the advances when the borrower makes a default. Secondly, high class stock exchange securities which are known as gilt-edged securities are more easily realizable than the securities of certain other kinds, viz., lands, buildings and certain kinds of goods, because there is always a ready market for good stock exchange securities even in fairly large blocks. Thirdly, in normal times, such securities are less liable to fluctuations than commodities such as cotton, sugar, etc. Ordinarily the prices of first class stock exchange securities are very steady and therefore bankers do not think it necessary to ask for a margin of more than 10 to 15 per cent. because they can be dealt without any trouble, expenditure and loss of time. Fourthly, in the case of stock exchange securities it is easier for the banker to satisfy himself about the title of the customer offering the securities and their market value than in the case of certain other kinds of securities such as lands, buildings etc. The banker need not consult his solicitor to satisfy himself

whether or not the title of his customer to the stock exchange securities offered is good. When the securities are fully negotiable, the banker in the absence of any knowledge as to the defect in the title of his customer can acquire a good title to them, if he is holder for value. Similarly, when the securities comprise of shares, the transfer of which must be registered in the books of the issuing company, there is hardly any difficulty in finding out whether or not the customer's title to them is good. Fifthly, their market price can be ascertained from the quotations given in the daily papers and those supplied by stock and share brokers' firms. Although quotations given in the newspapers are not always reliable, yet they can certainly give an approximately fair idea about the prices of stocks and shares in which frequent transactions take place. Sixthly, they can be more easily transferred than certain other partially negotiable securities, lands and buildings. For instance, if the securities are fully negotiable they can be transferred either by mere delivery, or by delivery coupled with indorsement. Lastly, the banker in case of need can, without any difficulty, raise money against such securities by pledging them to another banker.

As against the abovementioned advantages in favour of advances against stock exchange securities it may be stated that such advances are not without some drawbacks. Firstly, in case of partly paid-up shares, as already pointed out, the banker may be called upon to pay the uncalled amount if he or his nominee is registered as their owner. Secondly, the banker renders himself liable as transferee for an indefinite period to indemnify the company, against any loss it may suffer, if the transferor's signature on the instrument of transfer turns out to be a forged one, as in accordance with the decision in *The Corporation of Sheffield v. Barclay*, 1905, a transferee who sends in for registration a forged transfer must indemnify the company which has acted on the

Drawbacks. of making advances against stock exchange securities.

assumption that the same was genuine and this liability continues even though the transferee may have subsequently sold the shares. The risk may be avoided to some extent if all transfers of shares taken by the banker as security are signed and witnessed in his presence. Thirdly, the Articles of Association of Companies generally provide that the shares will be subject to their lien in case of default in the payment of calls on them or any other amount due to the companies, and the banker may, if he fails to give proper notice of his lien on the securities to the company concerned, find that he cannot get their full benefit. Fourthly, some shares are liable to very wide fluctuations and the banker may suffer a loss, if the customer does not maintain the margin agreed upon and the banker fails to realize them. However, bankers generally accept securities of a high class such as Government bonds, railway shares or stocks, and shares of good industrial and commercial companies which are not liable to heavy fluctuations. Fifthly, if the securities are not negotiable then their transferor cannot give to his transferee a better title than his own.

It is not uncommon with the bankers to advance loans to Stock brokers which are generally made "from Account to Account." These advances have an advantage over the loans to other customers against Stock Exchange securities in that they are of short duration and the security in the former case is readily saleable. The banker need not renew the loan if he is not agreeable. All that he has to do is to give a couple of days' notice before the fortnightly Stock Exchange Settlement, and he gets his money back. The need for such advances arises when the brokers' client has bought certain shares in anticipation of a rise in their price which does not come off and when he either does not want or is not able to pay for the shares. The stock-broker places them with the bank to finance clients wishing to benefit from speculation. However, the advances

to ordinary customers against Stock Exchange securities are a little less liquid because there is no understanding about their being repayable at a short notice.

When a banker is offered Stock Exchange securities as a cover for an advance he has to see to which class they belong. As explained in Chapter VIII the securities in which bankers usually invest their funds are public debts, debentures and bonds of Municipalities, Port and Improvement Trusts, and shares of guaranteed railways, all of which are considered quite safe. Securities of public utility companies such as tramways, electric, gas and telephone companies as well as shares of banks are also generally considered suitable for the purpose.

While lending against the shares of companies the banker should in his own interest ascertain whether such shares are partly-paid or fully paid-up. In the former case, he should make sure that no call has been made which the shareholder has failed to meet because such unpaid calls being in the nature of a specialty debt due from the shareholder to the company\* the latter can exercise its right of forfeiting any shares on which the calls are not paid, and consequently the certificates need not be returned to the company. Moreover, in the case of such securities the banker runs the risk, if he wishes to retain them, of being required to pay any subsequent calls in case the customer is unable to meet them. Otherwise, he will have to sell them out, possibly at a low price. If, however, the banker is quite confident that there is no likelihood of any further calls being made he may consider these securities almost as good as those fully paid-up.

As regards industrial securities the banker has to take greater precautions. In the first place he has to see what is the nature of the business in which the company issuing the securities offered is engaged. From the study of the

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\* Sec. 21 (2) Indian Companies Act, 1913.

its past history and management and the future prospects of the particular industry or trade in which it is engaged he can foresee at least to a certain extent whether or not the concern is likely to be successful. The shares of an industrial company which is well managed and which in the past has been paying dividends regularly are generally considered to be quite sound as security. Secondly the question whether or not a banker should accept industrial securities as cover for an advance will depend upon the nature of the securities offered. If they are debentures or bonds properly secured or guaranteed they are far better than the shares of a company, as the purchaser of a debenture, unlike its shareholder, is a creditor of the company. In case of shares, preference shares, particularly cumulative preference shares, are safer than ordinary shares of a company which in their turn are less risky than deferred ones.

When a banker is satisfied with the securities offered he has to ascertain their market price allowing for any dividend that may be included in the price quoted. Generally the stock exchange quotations are cum dividend as long as the dividend warrants are not issued. When the company whose shares are offered has closed its books for the preparation of dividend warrants the dividend declared but not paid will be paid to the person whose name is registered in the books of the company as the holder of the shares and therefore, the banker, for the purpose of valuation has to deduct from their market price the amount of the dividend. A banker should not always rely upon the quotations given in the daily or weekly papers particularly in the case of securities which do not appear in the "business done" column of the stock exchange quotation list. In such cases it is better to ascertain from the secretary of the company the rate at which the last transfer of its shares was registered. The

Valuation  
of securities.

banker should also note the date of the transfer and take into consideration the effect of any circumstances arising subsequently which are likely to influence the prices of the securities.

The next question a banker has to consider is what margin he should demand. As we have already stated in an earlier part of the chapter the general principles which should guide a banker in this respect, it does not appear to be necessary to dwell upon the same here.

After a banker has approved of the securities offered, ascertained their prices, and determined the necessary margin, he has to consider how best he should complete the security. In the case of fully negotiable securities the property in them can be transferred by mere delivery when they are bearer securities. But in the case of securities payable to a certain person or his order delivery coupled with indorsement of the person is essential for transfer of property in them. If the banker takes such securities in good faith and for value he gets a good title to them even if it transpires later on that the person who pledged them had no authority to do so. As bankers generally act in good faith and exercise reasonable precautions before accepting such securities no difficulty need arise on that score particularly as a business done in good faith even though it be done negligently should not affect adversely the title of the banker unless the negligence, when considered with the circumstances of the case is proved to be gross.\* This does not, however, mean that a banker's title would not be affected when circumstances connected with the transaction are such as should have aroused his suspicions that the securities deposited did not belong to the person depositing them. It appears necessary at this stage to state

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\* *Eckstein v. Midland Bank Ltd.*, 1926.

briefly what is meant by negotiability and what securities can be regarded to possess this quality.

A negotiable instrument is one which, when transferred either by mere delivery or by endorsement and delivery as required by the nature of the instrument passes to its transferee a good title, irrespective of any defect in the title of its transferor and free from equities which could be enforced against the original holder, provided that in the case of a bill of exchange promissory note or cheque he is a holder in due course, and in the case of other instruments he is a *bona fide* holder for value, without notice of any defect attaching to the instrument or the title of the transferor. For instance, if a bearer cheque is taken for value from a person who had stolen it, the party taking it in good faith and for value will get a good title to it. Its drawer can be sued on it and no equities which could be enforced against the person who obtained the cheque from the thief or the person who got it from the drawer by fraud can be enforced against its holder in due course. The transferee of a debt, on the other hand, cannot get a better title than that of its transferor and the debtor can enforce against the transferee the equities which he could put forth against the transferor, his original creditor.

### Forms of Negotiability.

Negotiability may be expressly given to certain instruments by statute law, as is the case with bills of exchange, cheques, and promissory notes including currency notes. As usage is the origin of the whole of the law merchant governing negotiable securities, it will be seen that the statutory negotiability of these instruments is the result of the recognition of certain mercantile customs.



Some documents though not possessing statutory negotiability may be treated as negotiable by the custom prevalent amongst merchants.

Negotiability by custom. It is necessary that this custom must be of the country where the transaction under dispute was made, as a custom of the country of issue of the instrument will not suffice: *Picker v. London and County Banking Co.*\* In this case the point at issue was the rights of a true owner against the *bona fide* holder of a Prussian Bond without coupon for interest. There was sufficient evidence to show that such bonds were treated as negotiable instruments in Berlin, but there was no evidence of a similar usage in London. The Court held that they were not negotiable. It may further be added that the instruments will be considered negotiable even if the usage is not sufficiently general to be called a custom, provided it could be proved that at the time of the contract the contracting parties had the knowledge of its existence.

Lastly, an instrument which from its nature is not, strictly speaking, negotiable may in the hands of a *bona fide* holder for value be treated as a negotiable instrument by the principle of estoppel, provided the instrument on the face of it, purports to be transferable by delivery or indorsement and delivery or its former holder represented it to be such. If such an instrument is entrusted to an agent for being dealt in the market the principal will be precluded from denying its negotiability against a person who has taken it *bona fide* and for value even if the agent in dealing with the instrument exceeds the authority given to him. However, it must be remembered, that the negotiability by estoppel, as it is sometimes called, cannot be pleaded except against the party who dealt with the instrument as such. Thus an instrument not generally recognised as a negotiable instrument cannot possess the qualities of a negotiable instrument for all transactions.

The following are considered fully negotiable stock exchange securities :—

1. Bonds payable to bearer.
2. Scrips\* to bearer.
3. Shares or stock warrants to bearer generally.
4. Debentures and bonds payable to bearer generally.

### Non-negotiable securities.

Generally the non-negotiable securities take one of the following forms :—

- (1) Inscribed Stocks.
- (2) Registered Stocks and Shares.

Inscribed Stocks are so called because the names of the holders of such stocks and the amount of their holdings are 'inscribed'—*i.e.* recorded in the books kept either with government or corporation issuing the same or its agent. When such a stock is to be transferred it is necessary for its owner or his duly constituted attorney to go to the office where the books for the transfer of the securities are kept and authorize the transfer of the stock he has sold. The holder of such stock does not, as in the case of bearer or registered stocks, receive any certificate of title which he is required to deliver to the vendee but he gets merely a receipt of acknowledgment which is valueless as a security and useful only as evidence that the holder has bought the stock to which it refers. It is therefore for the banker to have the stock transferred to his name or that of his nominee as no charge can be obtained by the deposit of the Stock Receipt. When Stock Certificates to bearer with interest coupons attached,

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\* Scrip is a term usually employed to denote the provisional certificate or document indicating the subscription to so much of a loan or so many shares. When the allotment money is paid, a scrip or provisional certificate is generally issued. Bonds are issued after the payment of final instalment. Scrips are held to be negotiable by the usage of bankers and dealers in public securities.

or registered stock certificates can be obtained at the holder's option in respect of his holding of inscribed stock, and whenever the holder exercises such option, it affords a less cumbrous and more advantageous method of perfecting the security without involving the formality attendant upon the transfer of inscribed stocks.

Most of the Stock Exchange Securities belong to the second category, *viz.*, registered stocks and shares. They are so called because the registration of their transfer in the books of the issuing company is necessary for acquiring a legal title to them. They are evidenced by certificates given under the seal of the issuing body. The Memorandum and Articles of Association of the issuing companies lay down their respective rules for the transfer of their shares.

The banker gets an equitable title to the securities deposited with him when his customer enters into an express or implied agreement with him to the effect that the securities are given to him to secure a debt due or to become due from him to the banker. The chief defect in case of an equitable title is that it can be defeated by a prior equitable title or a subsequent legal title. For instance, if a banker lends moneys to a customer against the equitable mortgage of certain shares of a company and subsequently the customer sells them to a person in whose name they are transferred in the books of the company the banker's title to the securities will be defeated by the legal title of their purchaser. As generally companies require that the share certificates together with the transfer forms must be submitted to the company for the registration of their transfer the risk is minimised but it is sometimes possible for the customer to obtain duplicate copies of the certificates by making a false statement that the originals have been lost and subsequently sell them and get them registered in the name of their buyer against whom the banker can

have no remedy as the buyer will have a legal title to them. However, the companies, in such a case, before issuing duplicate copies of the share certificates reported to be lost generally advertise the loss and their intention to issue the duplicates unless objections are received within a specified time and further require the shareholder applying for the issue of duplicate certificates to sign an Indemnity Bond in their favour. Similarly, if a banker gets an 'equitable' title to certain securities which turn out to be a trust property the banker's claim to the securities will fail against that of the cestue que trust, the person for whose benefit the trust is administered. Another disadvantage of securing a loan by an equitable mortgage of some shares is that if any new shares are issued by the particular company they may depreciate the market value of the shares charged. Again, if the company goes into liquidation or is re-organised, the bank, unless it is reviewing constantly the securities it holds, may never hear of the changes until it is too late to take any action. Although in the eyes of law a legal title to the securities is better than an equitable one, the former is not always preferable to the latter for certain other reasons. For instance if the shares deposited are partly paid-up the banker or his nominee by being registered as owner will run the risk of being called upon to pay the unpaid amount. Even if such shares are sold or retransferred to the customer the banker or his nominee will continue to be liable for the unpaid amount for twelve months after their retransfer. It is therefore desirable that unless the partly paid-up shares are of a very reliable company which is either not likely to make more calls or the making of calls on whose shares will cause appreciation in their prices, as is at present the case with the Imperial Bank of India partly paid-up shares\*, the banker should be satisfied with an equitable title to them if he decides

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\* These are known as Contributory Shares on the Stock Exchanges of Bombay and Calcutta.

to advance moneys against them. In the case of fully paid-up shares, no doubt, from the point of view of the banker's security, a legal title, which the banker can get by having himself or his nominee registered as their holder in the books of the company, is very desirable but the customer will not generally accept the arrangement, firstly, because he will be required to pay all the expenses of their transfer and retransfer and secondly, as it might affect his credit. Thirdly, the customer may be a director of the company whose shares are deposited and in case the shares are transferred from his name to that of the bank or its nominee the former may lose his seat on the Board of Directors by his failure to hold the minimum number of shares that a director of the particular company is required to hold. It is therefore generally not necessary for the bankers to insist upon acquiring a legal title to the securities offered.

Different ways of effecting equitable mortgage on registered securities.

Generally bankers effect an equitable mortgage on registered securities in one of the following ways :—

- (1) By mere deposit of securities.
- (2) By deposit of securities with a memorandum.
- (3) By deposit of securities with a memorandum and duly executed blank transfers.
- (4) By deposit of securities and execution of a special power of attorney in favour of the banker authorising him to sell them on default in the payment of the loan secured by them.

(1) The mere deposit of registered securities with a banker with the intention of creating a charge on them will give the banker an equitable title. As this title does not give the banker the right to realise the security on default of the borrower and as it can be defeated by a prior equitable or a legal title, this method of securing advances or overdrafts is not popular with the bankers for obtaining a title to securities deposited for a charge.

(2) Generally, when full legal title to stock and shares deposited as security cannot be obtained bankers obtain an equitable title by taking a memorandum of deposit\* from the customer himself or from a third party. The chief aim of the memorandum is to safeguard the banker as completely as possible against disputes as to the purpose of the deposit. For instance, in absence of some written evidence to the contrary, a customer might later on allege that he deposited the security to back an overdraft existing at the time of deposit, and not to cover any future advances. Consequently the memorandum generally provides that the security shall be continuing, and vests in the banker the power to sell the security when the customer defaults in clearing the advance. In the case of partly paid-up shares the banker is generally authorized by the memorandum of deposit to debit the customer's account with any amount to be paid by him for calls made by the company subsequent to the deposit of securities. In cases where the stocks and shares are deposited by a third party, *e.g.*, a guarantor, to secure the advances granted to a customer the memorandum provides that the surety shall not be discharged by any arrangements, as to the giving of time, etc., made between the banker and the principal debtor.

(3) When a banker cannot have the stocks and shares deposited duly registered in his name, perhaps the most effective way in which he can obtain an equitable title to them is by taking a blank transfer of the securities together with transfer executed by the customer lodging the securities. Although in many respects similar to a memorandum of deposit, a memorandum of transfer specifically provides that the securities deposited have actually been transferred to the banker, and that he is empowered to sell or otherwise deal with them as he thinks proper, upon default of customer. A blank transfer is merely an ordinary form of

\* For specimen see Appendix A, Form No. 10.

transfer signed by the transferor leaving blanks for the name of the transferee and the date. If, however, the date is filled in the instrument must be fully stamped within 30 days of its execution. But generally the date is left blank as the chief object of a blank transfer is to escape stamp duty, except where the regulations of the company concerned prescribe that transfer of its stocks and shares shall be by deed. A blank transfer will give the banker only an equitable title, until and unless he takes steps to register himself as transferee. As already stated, there is some risk that without the banker's knowledge the borrower may have transferred a prior equitable title or a full legal title to a third party, or the registered owner may be holding the securities merely as a trustee which will mean a prior equitable title of the beneficiaries of the trust. Moreover, in the absence of registration there is also the danger that the company may have a lien over the stocks and shares against the registered owner, or it may have received notice of a prior equitable title before the banker takes steps to have the securities registered in his own name or that of his nominee. The Committee of the London Stock Exchange require that a company desiring to have its shares quoted in the Daily Stock Exchange List will not exercise any such lien.

(4) By obtaining a special power of attorney from the customer the banker gets the former's authority to deal with the stocks and shares on behalf of his customer. The provisions of the power of attorney will generally protect him against all probable risks but he will be still as an agent of his principal, with certain powers granted to him by the latter.

When a banker agrees to lend money against the equitable mortgage of stock exchange securities he should take the following precautions in case of equitable mortgage. Precautions:—

1. The banker should send a notice\* to the secretary of the company the securities of which are deposited with him, to

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\* For a suitable form of notice, see Appendix A, Form No. 11.

the effect that he has a charge on them. Such a notice to the company in the first place will enable the company to inform the banker whether any one else has a prior charge on them. Secondly, this will secure priority for the banker over any fresh advance made by the company to the shareholder. Thirdly, it will prevent the issue of duplicate copies of share or stock certificates and thus the borrower will be prevented from giving subsequently a legal title to another person. Notice of lien is generally forwarded to the company in duplicate by registered post with a request that the company should acknowledge the notice by endorsing and returning the duplicate.

2. Another means by which the banker's equitable title to stocks or shares can to some extent be protected is by applying to the Court for a notice\* to be served on the company by the equitable mortgagee. The effect of notice under the order of the Court makes it incumbent upon the company to advise the banker should the registered shareholder attempt to transfer the shares and give the latter at least eight days notice before doing so. However, if after the expiry of the eight days the equitable claimant fails to take any steps to obtain an order from the Court restraining the transfer of the shares or the payment of the dividends the company may permit the transfer or make the payment. This will act as a good check on the customer, should he endeavour to transfer the stocks or shares deposited by him for a loan or overdraft, because within eight days of receiving notice from the company of which the banker is holding the stocks or shares, he will take legal steps to obtain an order of the Court restraining the company from sanctioning the transfer.

3. On no account should the banker part with the share or stock certificates as otherwise his customer may

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\* This is known as a *Notice in Lieu of Distringas* according to the English Law.



prejudice the banker's position by giving a legal title to another person.

4. It is essential that the securities must be taken in 'good faith' which means that there should be no circumstances which to an ordinarily cautious person would raise doubts as to the true ownership of the securities.

As a general rule the banker obtains a memorandum signed by his customer which generally contains a clause giving the former the power of sale. Apart from this the mere deposit of the securities implies the power to sell in case of the customer's default. When a definite date for the payment of the banker's loan has been fixed it is necessary for the banker to demand repayment at a reasonable future date. The reasonable period in such cases will greatly depend upon the circumstances of the particular case but a month's notice is considered reasonable. Even when it may not be otherwise necessary the banker should give notice of his intention to exercise his right of sale.

#### **Shares of private companies.**

It is seldom that shares of private companies find favour with the lending banker. This is because private companies being exempt from issuing any annual balance sheets it is not only difficult but almost impossible for the banker to form any idea about their financial position. As it is very rarely that such shares are dealt in the market, a banker lending against them cannot form any estimate as to their approximate value. Again while accepting the shares of a private company as security for an advance care has to be taken that their transfer to the banker or his nominee may not be refused by the company's directors. Lastly such shares are not easily marketable and in case a banker wishes to dispose them of he will find it difficult to do so.

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## CHAPTER XII.

### ADVANCES AGAINST GOODS AND DOCUMENTS OF TITLE TO GOODS.

In addition to the securities dealt with in the previous chapters, bankers, particularly in large ports and other commercial centres, advance funds against produce, goods and documents of title to goods. Whether or not such securities are suitable for securing banker's advances is a question on which divergent views are held by some of the leading authorities on the subject of banking. Sir John Paget in his book "The Law of Banking" \* says, " Provided the banker is dealing with honest and responsible persons, documents of title to goods, such as bills of lading, delivery orders, warehousemen's certificates, dock warrants, and letters of lien or hypothecation are convenient securities for advances. By means of them goods can be effectively pledged which obviously could not otherwise be utilized by reason of their bulk or location. By means of bills of lading in special goods on the high seas can be hypothecated before arrival and thus used as cover for bills given for price or for advances. Naturally, a very large proportion of this business is transacted through brokers and other agents of the owners of the goods, and the Factors Act, 1889 and the Sale of Goods Act, 1893, are praiseworthy efforts to minimise the banker's risks in dealing with such agents, and incidently quasi-owners, such as vendors who have already sold the goods elsewhere and vendees who may not be in a position to pass a good title to a sub-vendee or pledgee. The scheme of these Acts is not so much to elevate the various documents of title to the position of the banker's ideal security, the fully negotiable instruments, to which he acquires an indefeasible title, whatever

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\* Third Edition, pp. 425 and 426.

the customer's position, whether the customer be honest or dishonest, whether the security be the customer's own or he has authority to deal with it or not, and whether the banker takes it for an existing debt or a fresh advance . . . And, unfortunately, the provisions of the two Acts are so tangled, so complicated by cross-references and the idea of reducing everything to the common denominator of 'the mercantile agent,' that, for want of certainty, the safeguards are not so complete or re-assuring as they were doubtless intended to be."

On the other hand such securities did not find favour with Mr. Gilbert and Mr. John Hutchison.

According to Mr. Gilbert, "Another kind of security is bills of lading and dock warrants. Advances upon securities such as these must be considered as beyond the rules which prudent bankers lay down for their own government, they can only be justified by the special circumstances of each case. But in truth, no banker should readily make advances upon such securities. Now and then they take as collateral security for an advance to a customer who is otherwise respectable, but if such a customer requires such advances frequently, not to say constantly, it shows that he is conducting his business in a way that will not ultimately be either for his own advantage or that of his customer." \*

Mr. Hutchison is even more scathing. In his book, *The Practice of Banking*,† he says, "It will be observed from the forms of the documents known as brokers' undertakings or brokers' engagements in connection with produce, that these are utterly worthless as securities. If assistance by traders is required in this way the formation of a 'Traders Loan Company' might be projected, with its object openly professed, or a 'Traders' Pawn-Broking Company,' to meet the case of loans made expressly on warrants, delivery orders, and ware-

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\* *Journal of the Institute of Bankers* (1922), January, p. 8.

† Vol. III, page 327.

house-keepers' certificates. There might, however, be instituted to that effect a "General Hypothecation Company," by whom guaranteed transferable warrants for convenient amounts might be issued and occasionally accepted by the banks against advances."

In the face of this divergence of views between well-known writers on the subject, the reader is bound to ask the reasons for this difference. Mr. Steele attributes Mr. Gilbert's view to the fact that his experience of the business of the kind must necessarily have been exceedingly limited. Regarding Mr. Hutchison's opinion on the other hand it may be said, that knowing the complications and certain risks involved in accepting such securities he takes the pessimistic view, whereas Sir John Paget realising that there are risks of some kind or another in the case of most of the other securities against which bankers lend money, does not see any reason in discouraging bankers from investing funds in these securities. The change in the view during the last one hundred years or so is also due to the expansion of the modern commerce which could not have taken place but for the facilities which those engaged in it are able to get from their bankers.

Before considering the precautions which bankers should take in the case of advances against goods and documents of title to goods, it is desirable to see how these securities compare with other kinds of securities accepted by bankers. Produce, goods and documents of title to goods have the following advantages:—

#### **Advantages.**

Such securities are better than guarantees and bills of exchange because they enable the banker to fall back upon something tangible in case of the failure of the customers borrowing against such securities. When an advance is secured by a guarantee the personal security of the borrower is coupled

**Tangible Security.**

with that of another person called surety. In case both the parties—the principal debtor and his guarantor—fail, the banker's claim ranks equally with the claims of other unsecured creditors of the bankrupt customer. It should also be noted that a banker making an advance against goods and documents of title to goods is, in case of the failure of the debtor, generally able to recover the amount due to him by selling the goods, and for the balance, if any, can prove his claim against the estate of the debtor.

The second advantage in favour of securities of this kind is that if the goods advanced against are necessities of life, in normal times they are not liable to heavy fluctuations. Prices of necessities of life such as wheat, cotton, sugar, etc., do not fluctuate very much which is not the case even with certain kinds of shares the prices of which are comparatively less steady.

The third point in their favour is that they can be sold more easily than certain other securities, such as lands, buildings, etc. Particularly if the goods pledged are staples like rice, wheat or sugar the banker has practically no difficulty in realizing them. In case of immovable property the sale and the transfer of the property may take months even if the banker is willing to accept less than its proper price. The markets for produce and certain other kinds of goods have become more stable in modern times than was the case when international trade was not so developed as it is at present and therefore the old prejudice against this class of business has gone down considerably.

The fourth advantage in favour of these securities is that advances against them are generally for short periods and therefore the banker in lending funds against them has not to lock up his money for any considerable length of time, whereas in the case

of advances against immovable property the investment is usually for a long period.

Lastly, the prices of produce and goods can be more accurately ascertained than the prices of immovable property. A banker can keep himself in touch with the markets in staple commodities by getting reports from the brokers as well as by studying the reports published in the daily newspapers.

In addition to the abovementioned advantages from the point of view of the banker an important point in favour of such securities is that they help the commerce of the country and enable the people to get food, clothing, and other necessities of life far more easily and cheaply than it would have been possible otherwise. If a merchant has to restrict his purchases to the extent of his capital not only can he not have the advantage of lower prices, but also he is unable to keep sufficient stock and varieties of goods for his customers.

#### **Disadvantages.**

As against the above advantages these securities suffer from the following disadvantages:—

In the first place most of the goods are liable to deterioration and damage unless storage arrangements are quite satisfactory. For instance, a banker advancing money against fruits, oilman's stores, vegetables, etc., has got to be very careful in seeing that they are sold before they decay. It is not infrequent that the lender is put to loss simply because he does not have the necessary experience or knowledge about the commodities received by him as security. For example if he makes advances against rubber he should know that it shrinks and loses weight when stored for a considerable time. Similarly while accepting maize as security he should not forget that it "sweats" more freely than other kinds of produce. Secondly, certain kinds of goods are liable to wide fluctuations in demand as their market may depend upon fashion and a change in fashion may spell ruin to one who stocks them in great bulk. Thirdly, there

are, greater risks of frauds in connection with such securities than in case of certain other securities. For instance if an advance is made against sugar all the bags said to contain sugar may not have sugar in them. Some of them may contain merely sand or saw dust. There is also the risk of the quantity of goods not tallying with the invoice. A banker cannot know whether the contents of the cases offered as security are in accordance with their invoices.

In addition to the disadvantages stated above such advances have not been popular in India for the following reasons :—Firstly, in former days when the means of transportation and communication were but scanty the Indian markets were not well-organised which resulted in the fluctuations in prices to such an extent that even expert traders and merchants could not forecast the future demand or supply of commodities. Consequently cases were not uncommon when bankers came to grief on account of trade cycles or crises, and repented for having advanced large sums against goods.

Secondly, the law with regard to this kind of security was formerly in a less settled and satisfactory condition than it has since become. Even at present it is not easy to find experts in this branch of legal science. But for some Court decisions there was no legal enactment to speak of which could guide bankers contemplating advancing money against goods and produce or documents of title to goods.

Thirdly, in the absence of public warehouses in India, the produce is stored generally either in the godown of the borrower, the lender, or occasionally in a hired godown. The borrower undertakes to pay rent of the godown and effect insurance over the produce stored. India cannot boast of recognised warehouse-keepers which Europe and America possess. The law in those continents recognises the entity of such warehouse-keepers whose business it is to store goods, produce and merchandise on behalf of traders, exporters and

importers. They issue what are known as the warehouse warrants, which being negotiable instruments, the ownership and title of the goods stored pass by delivery of these instruments coupled with endorsement. The general practice in India of handing over the key of a godown by the borrower to the banker may deprive the former of facility for sale. However, as the present writer understands, bankers in India have in their own interests tried their best to afford every reasonable facility to such customers. They allow them to show samples to prospective buyers, grant partial releases against payment and at times even deliver goods against Trust Receipts, thus allowing the borrower the facility of transporting them and repaying the advance after negotiating the railway receipt or bill of lading. The late Mr. B. F. Madon had prepared a Draft Bill for the Encouragement of the Establishment of Independent Warehouses in India and to provide for their Proper Supervision and Control, but owing to his death it could not come up for discussion before the Indian Central Banking Enquiry Committee.

### General Precautions.

We shall first state briefly the important precautions\* required in the case of advances when they are secured by goods or documents of title to goods and then consider the important documents of title to goods as banker's securities. Firstly, it is very necessary for the banker to see that his customer who wishes to borrow money against the security of goods or documents of title to goods is trustworthy, prudent and capable and has practical experience of the produce or goods which he is handling. As in such transactions the risks of frauds are very great, it is absolutely essential that the customer should be entirely trustworthy. For instance, when a banker is offered 500 bags of cardamom lying in the customer's godown as security for an advance it is not possible for the banker to examine the contents of each and every bag. He

\*For a form of agreement used by an Indian Joint Stock Bank for advances on the security of pledge of grain and produce, see Appendix A, Form No. 10-A.



can at the utmost, open some bags to see what they contain. It is necessary from the banker's point of view that his customer should be well-acquainted with the business so that he may be able to dispose of the goods to his advantage as well as to the advantage of the banker who has advanced money against them. Many a time bankers have had to suffer losses on account of the inexperience of their customers. An experienced businessman dealing in a particular line knows the risks of his trade. For example, a manager of a provision store knows from his experience what provisions are liable to rapid deterioration or decay at certain times in a particular country.

Secondly, it is very necessary for a banker undertaking this business not only to acquire familiarity with the different markets such as cotton market, wheat market, etc., but also to have first hand knowledge of the conditions likely to affect them favourably or unfavourably. For instance, if he advances large amounts of money to cotton merchants he must be sufficiently familiar with the conditions of the cotton market so that he may be able to know when the price of cotton is inflated, otherwise he will not be able to regulate the margin for loans against the commodity according to the conditions of its market. Similarly, if he does not keep himself in close touch with the fluctuations in its price he will not be able to call upon his customer to maintain the margin agreed upon by the customer and this may result in the value of the security falling below the amount due from the customer. There may also be 'rings' and 'corners' in a particular market and it is, therefore, advisable for the banker to be in close touch with it.

Thirdly, in order that the banker's legal title to this class of securities be unassailable he should on the one hand deal with the owner of goods or an agent in possession, and on the other, he has to see that he takes possession—actual or constructive—of the goods charged. As a

Banker to be familiar with different markets.

To deal with owner of goods or an agent in possession and to take possession of the security.

transferee of goods, unlike the transferee of a negotiable security cannot get a better title than its transferor, it is necessary that the person from whom the banker takes the goods is either their owner or an agent in possession as stated in Chapter XI. The term possession as used here is quite distinct from the physical possession of the goods with the consent of the owner which can better be understood as custody. The delivery of the goods to the banker is necessary to safeguard his interests and he should generally insist upon the same being made before the grant of the loan. However, it is not necessary for this purpose to have the goods removed from the customer's godown to that of the banker as the handing over of the keys of his godown by the customer to the banker and transferring the services of the watchman, if any, from the customer to the banker will be regarded as constructive delivery or transfer of possession. When it is not practicable to have even constructive possession of the goods at the time of the grant of the loan, a banker may ask the customer to enter into a contract of hypothecation by which he should undertake to pledge the goods subsequently when he is required by the banker to do so. In this way a banker can no doubt acquire an equitable title to the goods, but he runs the risk of someone else acquiring a legal title without notice of contract of the hypothecation and thus depriving the banker of his security because such contracts are good only in equity and are not recognize by law. To illustrate the principle stated above, we give below the facts of the well known case *In re Hamilton Young & Co.*\* Messrs. Hamilton Young & Co., shippers of piece-goods used to buy cloth and after getting the same bleached and dyed used to consign it to Messrs. Ewing & Co. of Calcutta. The National Bank of India, Ltd., which financed Hamilton Young & Co's purchases of the cloth got from the said firm a letter of lien in the following form :—" We beg to advise having drawn cheques on you for £—, which amount

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\* (1905) 2 K.B. 772.

please place to the debit of our loan account, as a loan on the security of goods in course of preparation for shipment to the East. As security for this advance we hold on your account and under lien to you the undermentioned goods in the hands of—as per their receipt enclosed. These goods when ready will be shipped to Calcutta, and the bill of lading duly indorsed will be handed to you and we then undertake to repay the above advance either in cash or from the proceeds of the bill on Ewing & Co., Calcutta, to be negotiated by you and secured by the shipping documents representing the abovementioned goods etc.” On the failure of Hamilton Young & Co., their trustee in bankruptcy claimed certain goods in the hands of the bleachers. The Court held that Hamilton Young & Co’s trustee in bankruptcy could not succeed as the letter of lien given by the said firm to the banker was a document which evidenced a transaction of the most ordinary kind as between bankers and merchants.

Fourthly, the banker should see that the goods offered as security are more or less necessities of life which can be easily sold. For instance, it is not at all difficult to sell wheat, cotton, jute, sugar, etc., in large quantities without any appreciable lowering of their price. On the other hand, it is difficult to sell made-up goods the demand for which is more or less uncertain. Another advantage in favour of staple goods or articles is that their prices are comparatively steady and therefore the risk which a banker runs in advancing moneys against them is less than in the case of other goods the prices of which depend very largely upon the vagaries of fashion.

Fifthly, the banker has to be careful in the valuation of goods. He has to satisfy himself about the quantity as well as the price of goods offered as security. For instance, paddy loses in weight when it is stored for sometime and therefore it is not

Goods or produce to be accepted as security should as far as possible be necessities of life.

Proper care in valuation.

quite safe to assume that its weight as at the time of its purchase will be the same as at the time of sale when the two are separated by a considerable length of time. In advanced agricultural countries of Europe and America where advances are sometimes made against standing crops, the valuation problem is more acute as only persons exceptionally experienced are able to estimate accurately the value of such securities. This done, the true owner of the standing crop gives a letter of hypothecation to the banker, and the former harvests the crop, stores it, and sells it on behalf of the latter, who has a first charge on the produce for his advances. Such advances, however, except for some stray instances of loans against tea, rubber, and coffee estates in Assam and Ceylon and the Nilgiris are not very popular with the Indian Joint Stock banks, although the indigenous banker and the co-operative banks all over the country finance the ryots for their agricultural operations. As the average Indian agriculturist generally labours under heavy debts incurred as a result of his lavish social customs, and agricultural land, the only security he can offer, being not easily saleable, banks in India are naturally very reluctant to entertain proposals to advance moneys to him for various agricultural operations.

Although from the point of view of steadiness in their prices goods and produce are easy to evaluate, some difficulties do crop up on account of the great risks of fraud. Usually a banker will employ a broker who is competent to value them yet it may not be always practicable. The banker will take into consideration the cost of the goods as shown in the invoice but he cannot absolutely depend upon the same as the prices given in the invoice of the goods might have been intentionally inflated. If possible, the banker should see how the invoice prices compare with the sale proceeds. The banker has also to see that the goods left with the banker are neither unsaleable nor saleable at a considerable reduction in

their price shown as in the invoice. In the case of packed goods certificates of reliable packers may generally be depended upon.

Sixthly, if a banker has advanced money to a customer of comparatively small means against the security of commodities such as cotton, wheat, etc., it may be desirable to 'hedge' the unsold stocks by the sale of 'futures' with the consent of the owner of the goods or his legal attorney. Thus if the price of the security goes down the fall in the same will be made good by the difference in the sale price and the settlement price of the forward sale.

Seventhly, the banker should see that the goods against which money has been advanced, are properly stored and insured against loss by theft, fire, etc. In this respect a banker can never be too careful. For example where the produce stored in a godown is adequately insured against fire and theft there might be a danger of damage from leakage in its roof due to heavy rains which may cause the security to "eat its own head off." The locality should be carefully reconnoitred as a neighbouring workshop, a chemical laboratory, an adjacent fireworks store, or a magazine of explosives, may cause damage to the godown. If it is near a canal or a river a flood may prove dangerous. The godown may be liable to a fire resulting from defective electric fittings in the building. When the produce stored is not adequately insured or the godown is not safe the banker should obtain the necessary authority from his customer to warehouse the same elsewhere and have it, adequately insured at the expense of the customer. It should be made clear in the agreement of deposit that such payments as the banker may make by way of rents, salaries of watchmen and insurance premia will form a part of the advance and carry interest like the amount advanced.

Eighthly, a banker should not, as far as possible, rely only on the deed of hypothecation but should **Must have legal possession of the produce.** try to have the legal possession of the produce. This is one of the causes why bankers in India hesitate to advance against standing crops. Possession of the goods is the only real security in the case of customer's insolvency. However, where it is not possible for the banker to have full legal possession of the commodities charged he will be well advised to insist for an additional security, e.g., a continuing guarantee from an independent substantial party.

Lastly, while effecting a release the banker should take care that the proportionate value of the produce to be released is received. He **Strict supervision regarding releases.** should supervise either personally or depute a responsible employee to see that the proper quantity of the produce is released and that the security left behind adequately covers the advance still outstanding. It happens, not infrequently, that when produce of different grades and kinds is pledged, the borrower effects releases only of the saleable grades and the banker is burdened with goods for which he cannot find a market or the value of which is inadequate to repay his advance. He should also arrange for periodic inspections to see that the produce pledged has not decayed or deteriorated due to long storage.

### **Advances against Documents of Title to Goods.**

Before considering the particular points arising in connection with advances against documents of title to goods it is necessary to explain the principal documents which are used in the ordinary course of business as proof of the possession or control of goods.

The following are the principal documents of title to goods :—

1. Bills of lading.
2. Dock warrants.
3. Warehouse-keeper's certificates.
4. Delivery orders.
5. Railway receipts.

“ A bill of lading is a document issued and signed by, or by the authority of, a ship's captain, acknowledging that the goods mentioned in the bill have been duly received on board the ship, and undertaking to deliver the goods in the like order and condition as received to the consignee or to his order or assigns, provided that the freight and any other charges specified in the bill of lading have been duly paid.”\* It may also be stated that although a bill of lading is *prima facie* an evidence that the goods of a particular weight were put on board the ship, the ship's captain has the right to prove that the goods were not actually put on board. He merely certifies by number or weight or both the shipment of particular bales or parcels and is in no way responsible for their actual contents. Generally, a bill of lading contains an agreement as to apportionment among all the parties interested, of loss caused intentionally for the preservation of the ship, *e.g.*, the throwing overboard of the cargo when the ship is very heavily loaded. According to the Law Merchant the bills of lading were always regarded as symbols of title. In *Saunders v. Mac Lean*<sup>†</sup> Bowen L.J. said, “ A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage

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\* Practice and Law of Banking by H. P. Sheldon, p. 399.

† (1883) 11 Q.B.D. 327.

the bill of lading by the Law Merchant is recognized universally as its symbol, and the indorsement and delivery of the bill of lading operate as a symbolical delivery of the cargo. Property in the goods passes by such indorsement and delivery of the bill of lading, whenever it is the intention of the parties that the property should pass, just as under similar circumstances, the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods and completing the title of the indorsee to the full possession thereof, the bill of lading until complete delivery of the cargo has been made on shore to someone rightfully claiming for it, remains in force as a symbol, and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the ship-owner. It is a key which in the hands of the rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be. The above effect and power belong to anyone of the sets of original bill of lading, which is first dealt with by the shipper. Except in furtherance of the title so created of the indorsee, the originals of the set are, as against it, perfectly ineffectual and of no efficacy whatever unless they are fraudulently used for the purposes of deceit."

It may be added that a bill of lading is not a negotiable instrument in the same sense that a bill of exchange is. If a bill of exchange payable to order and duly endorsed or one payable to bearer is stolen the party taking it in good faith and for valuable consideration acquires a good title thereto. In the case of a bill of lading, however, its transferee would not get a better title than that of its transferor. A bill of lading bears some resemblance to a cheque crossed 'not negotiable', yet under certain circumstances the former acquires a much wider negotiability than is possessed by the latter. According to Sir John Paget "the only

Bill of lading distinguished from bill of exchange.



exceptional feature possessed by bills of lading is their acknowledged capacity to defeat the unpaid vendors' right of stoppage *in transitu* when transferred with authority to a *bona fide* transferee for value." Otherwise the buyer of goods being insolvent, the unpaid seller has the right of stopping the goods in transit and resume possession of them while they are in course of transit until the payment of the price.

A dock warrant\* is a document given by a dock company, warehouse company or a wharfinger, in exchange for the goods deposited acknowledging the receipt of goods and undertaking to deliver them to the order of the depositor.

A warehouse-keeper's certificate† is a document given by a warehouse-keeper, certifying that he holds certain goods described in the certificate and awaits instructions from the person to whom the certificate is addressed. It is a deposit receipt only and hence not transferable. This kind of document must be distinguished from a delivery order. If the owner wants to get the goods out of the warehouse he must obtain a warrant from the warehouse-keeper whereby he may be authorized to assign the goods.

A delivery order is a document addressed to the proprietors of the warehouse where the goods are lodged by their owner and purports to convey his instructions regarding their delivery. Either the owner himself or his assign fills in the name of the person who is authorized to take delivery of the goods. Delivery orders are transferable by indorsement and delivery. The mere possession of such a document by a banker, as pledgee, will not, in the event of bankruptcy of the customer, suffice to transfer the property in

\* For a specimen of a Dock Warrant, see Appendix A, Form No. 13.

† For a specimen of a Warehouse-keeper's Certificate, see Appendix A, Form No. 14.

them, until it is presented to the warehouseman or wharfinger, who attorns it to the holder.

In dealing with documents relating to goods it is necessary to distinguish between those documents that give title to the goods named in them and those documents which are mere receipts acknowledging that the goods have been deposited in a warehouse. To the first of these two classes belong the bill of lading, dock warrants and warehouse certificates. This distinction is important because by the possession of the documents which give a title to the goods, the possessor can take the goods out of the "order and disposition of the bankrupt." But unless the goods have been registered in the name of the pledgee, the possession of the warehouse-keeper's certificates, or receipts or delivery order is of no avail against the trustee in bankruptcy for claiming the possession of the goods.

In addition to the drawbacks of making advances against goods explained already in an earlier part of this chapter, documents of title to goods as security for banker's advances entail certain other risks. Firstly, there are greater chances of banks being defrauded by means of documents of title to goods than by goods. The documents offered may be forged ones or the number of bags or packages stated in the bill of lading or railway receipt may be fraudulently raised. Moreover, the carrier does not guarantee the contents of the cases or bags. A person may consign 50 bags containing sand or sawdust and may declare their contents as wheat and obtain a railway receipt for 50 bags of wheat. Consequently, the banker advancing money against such a receipt will have no claim against the railway company on the grounds that the contents of the bags do not tally with those given in the receipt. The Railway Receipts as issued at present by the several Railways in India are not negotiable.

Moreover they do not give a full and correct description of the goods. Consequently a railway receipt is not looked upon as a good security. The recent decision\* of Justice Waller also corroborates the above view that a railway receipt endorsed to a banker is not a good security. It would indeed be a great service to the banking and commercial community if the railway receipts were made to give full description of goods covered by them and were made negotiable. Again, documents of titles are not negotiable securities and therefore title to the goods cannot under any conditions be acquired if the documents are stolen, but as such documents are transferable they can be taken as security from (1) the owner of the goods, (2) the transferee, or (3) the mercantile agent in possession of the document as agent. Supposing a bill of lading is sent to X along with a bill of exchange on the understanding that the bill of lading is to be kept against the acceptance of the bill of exchange by him, but if he keeps the bill of lading, and pledges the same with a banker who takes it in good faith and for value, and returns the bill of exchange unaccepted, the banker will get a good title to the bill of lading. However, if the bill of lading is obtained by a trick or theft the banker will get no title. In the case of railway receipts deposited as security for an advance the banker should be careful to notify the railway company of his lien over the goods, otherwise there is the danger of the borrower's taking delivery of the consignment by giving an indemnity bond to the company and the banker may have to seek the help of the court for a decree against the borrower who may by that time have become insolvent, insane or dead. In the United States of America the railway receipts are sometimes certified as genuine.

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\* *Official Assignee of Madras v. Mercantile Bank of India* (date of decision 7th January, 1930). Fortunately for the Indian banker, their lordships the Chief Justice and Justice Stone of the Madras High Court have reversed the judgment of Justice Waller and have held that the endorsement of railway receipt had the effect of a pledge of goods. (A. I. R. 1933 Mad. 207).

An unpaid seller of goods has the right to stop the goods on their way to the buyer if the latter becomes bankrupt before goods are delivered to him.

Right of stop-  
page in transit.

The seller's right is not affected in case the buyer resells the goods without the consent of the seller. But if the seller has given a bill of lading or other document of title to goods and the buyer transfers the document to a person who takes it *bona fide* and for value, the seller's right of stoppage ceases. Thus the banker's right is not affected by the right of the unpaid vendor of goods when documents of title to goods are pledged as in that case the unpaid seller's right is subject to the rights of the banker who is the *bona fide* transferee of the documents for value. But in order that the seller's right may be defeated it is most essential that the bill of lading must have been received by the buyer with the consent of the seller of the goods. If the bill be obtained by trick or larceny the protection is not extended to the transferee. If the bill is obtained by false pretences, then also the right of stoppage is defeated.

General precau-  
tions.

The following general precautions are taken by bankers while advancing money against documents of title to goods:—

1. The honesty, the reliability, and the experience of the customer are most essential. Unless the banker can rely upon his customer he is unable to satisfy himself as to the genuineness of the documents of title to goods. As stated already customer's experience of the line is necessary to avoid the sale of goods at a loss, or their deterioration.

2. In order to ascertain the contents of the packages the banker should ask for the certificate of a reliable packer or depute a responsible representative to supervise the packing, the cost of supervision being borne by the borrower.

3. The banker should try to get all the copies of the bill of lading. The need for this will be understood, when we know that the captain of the ship is under no obligation to enquire into the title of the holder of the bill of lading and is willing to give him the delivery of the goods provided he does not know that another copy is pledged.

4. The banker should see that there are no onerous clauses in a bill of lading and the charter party. Sometimes a bill of lading may contain an onerous clause such as "and all other conditions as per charter party," which may involve the payment of heavy charges incurred through no fault of the banker or his customer, and therefore before advancing money against them, the banker should see what other conditions are laid down in the bills of lading.

5. It is always in the interest of the banker to get the bill of lading endorsed in blank by the consignee. In such a case the liability of paying the freight falls upon the customer and not upon the banker.

6. It is necessary that the banker should get the insurance policy of the goods. He should insist upon having the policy and not the broker's note. Some shippers get open policies issued by insurance companies. It is not enough to have an open insurance policy only, but the insurance company should state that such and such goods are covered under that policy.

7. When the banker has to part either with the bill of lading or the goods without receiving the amount due from the customer, it is essential that he should get a Trust Receipt\* signed by his customer agreeing to hold the goods or their sale proceeds in trust for the banker as long as the whole

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\* For a suitable form of Trust Receipt, see Appendix A, Form No. 17.

amount due is paid off. If a customer who has signed such a Trust Receipt fails to hand over to the banker the sale proceeds of the goods sold, the former will be liable for criminal breach of trust. A recent decision of the Madras High Court in regard to these trust receipts, however, has almost stunned the banking community in India. The Central Bank of India Ltd. instituted prosecution against two groundnut exporters in Madras but the Court's decision has put some difficulties in the way of bankers wishing to prosecute the executants of such trust receipts. According to the Court's verdict in this case the banker cannot claim any amount from the borrower without proving actual loss to the bank or likelihood of loss arising from the borrower's fraud. The present writer highly commends the suggestion made by the Indian Central Banking Enquiry Committee in para. 565 of their report that "the position as regards this matter may be investigated by the legal advisers of Government and such action taken as may be considered necessary."

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## CHAPTER XIII.

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### MISCELLANEOUS SECURITIES.

#### **Lands & Buildings.**

The functions of a commercial bank are not those of a building society. Consequently it is only on rare occasions that bankers decide to advance moneys against real property, or deeds relating thereto. It is therefore proposed not to devote much space to this subject. Moreover, the law relating to the mortgage of immovable properties is far more complicated than the laws which govern other classes of securities against which bankers usually make advances. The amount of funds lent by commercial banks against such securities is comparatively small because lands and buildings as securities for loans do not appeal to them for the following reasons :—

Reasons for brief treatment.

#### **Causes of their Unpopularity with the Bankers.**

(1) Where there are no legal or customary hindrances in the transfer of property, it will form a sound and valid security. But in cases where legal enactments place some checks on such transfers, several complications spring up in connection with the banker's advances to his customer. For example, the Punjab Land Alienation Act is a great hindrance in the transfer of land in that province as it does not permit a non-agriculturist to acquire agricultural land. Again certain Hindu as well as Mohammedan laws and customs relating to succession and transfer of property put serious obstacles in the way of banker's

Legal hindrances.

providing financial accommodation on the security of what is ordinarily considered to be a normal and sound security.

(2) Before getting accommodation against real property the customer has to incur heavy expenses for mortgaging the property. If the customer is unable to meet them he will have to borrow more money which is likely to weaken his financial position.

(3) The ideal a lending banker pursues is to cover his advances with securities of a convertible nature. Lands and buildings being difficult to realize it is not in the banker's interest to leave his moneys locked up for a long time. Particularly, commercial banks whose liabilities are chiefly in the form of deposits, which are payable either on demand or at short notice, cannot afford to have their hands tied down by advances for long periods.

(4) Another important drawback in the case of such securities is the difficulty of finding out whether or not the person offering the security has a good legal title to the same, as the law on the point is so complicated that only highly trained lawyers can certify whether or not the title of a person to an immovable property is good. Further, before a lawyer can certify as to the title being good he has to peruse carefully all the title-deeds, and also to refer to the office of the Sub-Registrar of Assurances where all documents purporting to deal with immovable properties are registered to find out whether there are any existing incumbrances against the immovable property proposed to be mortgaged. Again, a search has to be made in the office of the Sheriff if the property proposed to be mortgaged is in the Presidency towns, and in Courts if it is situated in other places, to find out whether there is any existing attachment or other order of the Court



whereby the property proposed to be given as security is already incumbered. All this is absolutely necessary, for all prior incumbrances or burdens on the property proposed to be mortgaged of which the banker has actual notice or ought to have notice by making proper search as indicated above, have priority over any further charge on the said property. Moreover, a person who is in possession of the title-deeds of an immovable property may not be the absolute owner of the same, as for instance he may be holding the title-deeds in some right other than that of absolute ownership such as mortgagee or lessee. If he is a mortgagee his right to mortgage the property is limited to the extent of the amount advanced by him and interest due and if he is a lessee, to the transfer of his rights and liabilities under the lease. Further the banker should take into consideration certain incidents which go with the land. As for example there are various tenures such as Freehold, Fazandari, Sanadi, Khoti, Inami, Toka, etc., under which the land in Bombay Presidency falls. Similarly in the provinces of Madras, Bengal and the Punjab there are the Ryotwari, Zamindari and Patidari tenures respectively. These different tenures have different incidents attached to them and consequently the value of land varies according to the tenure to which it belongs. In short the subject of mortgage of immovable properties is a highly technical one and a banker cannot always advance moneys on the security of an immovable property safely without having expert legal advice.

- (5) Another difficulty in such cases is the difficulty of valuing properties, for the banker can only advance money to a person after keeping a safe margin for the fluctuations in the price of land and building, the depreciation of the building and several other factors. In this matter the banker cannot rely upon his own judgment but has to depend on the valuation reports of expert surveyors, architects and engineers.

Difficulty in valuation.

(6) Another drawback of such securities is that in case the mortgagor fails to repay the amount due from him, the banker has to undergo several formalities before the sale of lands or buildings is completed. Consequently he has to wait for several months before it is possible for him to get back his moneys.

Delay in realisation of the security.

(7) Although at the time of granting accommodation against lands and buildings the banker expects to get some rent by letting the property during the period of the loan but he has to pay the costs of repairs to keep the property in a lettable condition. Moreover he will also have to take the trouble of finding suitable tenants, unless he is able to entrust this work to competent estate agents.

To pay costs of repairs and find tenants.

(8) Lastly, no doubt the cost of the property may be very high but it may not fetch anything like that in the open market. It may so happen that the owner, in satisfying his own taste, has incurred additional expenditure which does not add materially to the value of the property for the purposes of an ordinary tenant. The situation or locality may take away substantially from the property values, for example, a palatial building in an out-of-the-way village. Then, the value may depend on the presence of some particular institution or undertaking in the locality which may not be of a permanent nature.

Cost of the property not always helpful in valuation.

For reasons stated above it will be seen that advancing of moneys on the security of immovable properties is not at least a kind of business popular with commercial banks inasmuch as they have to rely not on their own judgment but largely upon that of others both as regards the valuation of the immovable property offered as security as well as the title of the person proposing to mortgage the same.

A mortgage is defined by Sec. 58 of the Transfer of Property Act as "the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability." The essential feature of mortgage is the transfer of an interest in specific immovable property for the purpose of securing a debt or obligation. If the transfer is made for any other purpose such as the discharge of debt, it cannot be called a mortgage. Moreover, the immovable property to be mortgaged must be specific, that is, it should be clearly defined. It may also be added that the term immovable property referred to above does not include grass, crop or standing timber.

**Main classes of mortgage.** Mortgages may first be classified under two heads:—Legal and Equitable.

A legal mortgage is defined by Mr. H. P. Sheldon\* as "the transfer by deed of the legal estate in land, subject to the mortgagor's rights, as a security for the payment of money due, or to become due, to the person who takes the security." In the case of a legal mortgage the transfer of the legal rights to the person to whom the security is given is essential. In other words the legal title to the property is transferred to the mortgagor's right of redemption, that is, the right to have the property reconveyed on the payment of the loan together with interest and charges incurred by the mortgagee in protecting, preserving, or enforcing his security.

When a loan of money is secured by the deposit of title-deeds it is known as an equitable mortgage because in such a case no legal transfer of property takes place. In *Foster v. Burnard*† Lord Haldane said, "The deposit of title-deeds with bankers

\* The Practice and Law of Banking by H. P. Sheldon, p. 368.

† (1916) 2 A.C. 160.

makes the bankers mortgagees in the eye of Equity." Thus it will be seen that the essential requirements of an equitable mortgage are:—(1) The debt, (2) the deposit of title-deeds of the property to be mortgaged, and (3) the intention of giving the banker a security. Such a deposit gives an equitable title to the banker to realise the amount due to him for the property mortgaged.

Considering the fact that the law of mortgages of immovable properties is very complicated and technical, the Indian Legislature\* has for the purpose of facilitating quick loans in urgent cases further enacted that in the towns of Calcutta, Madras, Bombay, Karachi, Moulmein, Bassein and Akyab and in any other town which the Governor-General in Council may, by Notification in the Gazette of India specify, a mortgage may be created by a person of his immovable property by delivering to his creditor or his agent documents of title to such immovable property with the intention to create a security thereon. While it is true that there is a good reason for the restriction of this facility to large cities where people are not illiterate and ignorant it is submitted that as recommended by the Central Banking Enquiry Committee in para. 563 of their report the above provision should be gradually extended to other commercial towns.

Equitable mortgages are preferred to legal mortgages, firstly on the ground of saving in time and trouble. If a customer of a bank wants urgently an advance against his immovable property and can satisfy the bank authorities as to

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\* Sec. 58 (6) of the Transfer of Property Act.

his title and valuation of the property, the money may be advanced to him without any delay as an equitable mortgage need neither be in writing nor be registered. Secondly, legal mortgages are liable to fairly heavy stamp duties, and therefore the expenses of executing a legal mortgage are saved if the money is advanced against the deposit of title-deeds. Thirdly, the mortgagor's credit is likely to suffer if he gives a legal mortgage as not only the witnesses who sign the legal mortgage deed, but also those through whose hands the deed passes for registration will come to know of the mortgage. In fact, anybody may read its contents on payment of a nominal fee to the Registration Office.

As against the points in favour of equitable mortgages given above, it must be stated that the equitable mortgagee runs the risk of his title being defeated by one with a legal title or a prior equitable title. However, if the title-deeds of the property mortgaged are not parted with by the banker and if the customer's character is known to be above suspicion, the risk is not very great. There is also the further disadvantage of a delay in realising the security as the equitable mortgagee has no right to sell the property without an order of the Court of law. This drawback can be remedied by the banker insisting on having a power of attorney in his favour from his customer authorising the former to sell the property in case of the latter's default. When the property to be mortgaged is a building, irrespective of the fact whether the mortgage is equitable or legal, the banker should see that the property is insured against fire with a reliable insurance company and the policy assigned to him. For a detailed and further consideration of the law of mortgages of immovable properties in India the student is referred to Secs. 58 to 104 of the Transfer of Property Act, 1882.

**Classification of  
legal mortgages.**

The following are the different types of legal mortgages allowed by the Indian law :—

**Simple mortgage.** “Where without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money, and agrees, expressly or impliedly, that in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of the sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.”

**Mortgage by conditional sale.** “Where the mortgagor ostensibly sells the mortgaged property on the condition that on default of payment of the mortgage money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale.”

A mortgage by conditional sale should be distinguished from a mere conditional sale in which case the sale is complete with a condition superimposed that if the vendor repays the amount of the sale price within a certain time the sale would be cancelled.

**Usufructuary mortgage.** “Where the mortgagor delivers possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the

mortgage-money or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee."

"Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage."

From a study of the different kinds of mortgages defined above the reader will have seen that the different kinds of mortgages confer different rights on the mortgagee for the realisation of the amount advanced by him.

The simple mortgage comprises two contracts: (1) a personal obligation on the part of the mortgagor to pay the debt and (2) a contract empowering the mortgagee to realise his security by selling through and by the order of the Court. A simple mortgage does not confer on the mortgagee the power of sale, and therefore he must sell through a Court of law. In the mortgage by conditional sale there is an ostensible sale of the property with a right reserved to the mortgagor under certain conditions to redeem the property. In an usufructuary mortgage the delivery of the possession of the property to the mortgagee is a *sine qua non*, and the possession is so delivered with three objects, *viz.*, that the usufruct of the property is to be utilized by the mortgagee, (1) in lieu of interest, (2) in payment of the principal or (3) partly in payment of principal and partly in payment of interest. A usufructuary mortgagee as such cannot sue for foreclosure, nor is a usufructuary mortgagor personally liable to repay the loan, the

essence of an usufructuary mortgage being that the mortgagee looks to the rents and profits for the satisfaction of his advance. The three essentials of an English mortgage are as follows :—

(1) That the mortgagor should bind himself to repay the mortgage-money on a certain day, (2) that the property mortgaged should be transferred absolutely to the mortgagee, (3) that such absolute transfer should be made subject to a proviso that the mortgagee will reconvey the property to the mortgagor, upon payment by him of the mortgage-money, on the day on which the mortgagor binds himself to pay the same.

In all the above cases of legal mortgages whenever the principal money secured is more than one hundred rupees, a valid and legal mortgage can only be effected by registered instrument signed by the mortgagor and attested by at least two witnesses.

Registration  
when necessary.

### Life Policies.

A life policy is a contract which is entered into between a certain person and an insurance company by which the latter in return for either a lump sum to be paid at the time of the contract on payment of premia for a fixed number of years, or throughout the life of the former, undertakes to pay a certain sum with or without profits either on his death or on his attaining a certain age. When the amount is payable on death the policy is known as a Whole Life Policy, but when the payment is to be made either on death or on the attainment of a certain age whichever event may happen earlier, the policy is called an Endowment Policy. The premia may be made payable throughout the life or only for a fixed number of years. The latter form is preferable in the case of persons who are in Government or other service the rules of which require a person to retire on reaching the age of 55 or in some cases 60 years.

Definition.



### Reasons for their Unpopularity as Securities for Banker's Advances.

Life policies have not been very popular with bankers as covers for their advances for the following reasons:—

1. A contract of life insurance is a contract requiring utmost good faith on the part of the assured who is required to disclose all material facts concerning his life. If he fails to disclose even one material fact, though unintentionally, it may enable the insurance company to avoid its liability. A banker has no means of knowing how far the assured has disclosed all the material facts affecting his life, and if the assured has been guilty of fraud, misrepresentation or failure to disclose a material fact, the banker stands the risk of losing his moneys.

2. Formerly the liability under a contract of life assurance was invariably avoided in case of the assured committing suicide or dying by the hand of justice and the security became useless in case of such an event. Although in modern times the restrictions of this nature when the assured commits suicide have been modified, the banker has yet to be very careful about the wording of the clause referring to the same. In *Rewett Leakey & Co. Ltd. v. Scottish Provident Institution*,\* "One Mr. Rewett had obtained large advances from his company, and to meet the position the company had taken out from the assurance company, three policies for £10,000 each on Rewett's life. Each of the policies contained a clause, "That the life assured shall not within six months from the date of the policy commit suicide, but such suicide shall not affect the interest of the *bona fide* onerous holders." Rewett committed suicide within six months of the assurance being affected. The plaintiff company sought to recover £ 30,000 under the

\* *Bankers & Insurance Agents' Magazine*, June (1926), p. 888.

policies, while the assurance company claimed that they were not liable because Rewett had committed suicide within six months of the assurance being effected and the plaintiff company were not "*bona fide* onerous holders." The Court gave judgment for the assurance company. The case was taken to the Court of Appeal which confirmed the decision of the lower Court. From a perusal of the judgment it appears that in the opinion of the Lords of Appeal the plaintiff company failed to substantiate their claim against the assurance company not because of the phrase "*bona fide* onerous holders," which it had been stated in the lower Court as having no meaning at all in English Law, but because the plaintiff company were not *bona fide* holders. They were, in fact, the assured one of the original parties to the contract.

3. Generally a life policy is taken out by the assured with the express intention of providing for his wife and family, in which case a banker may have some hesitation in claiming the proceeds of the policy in satisfaction of the debts of the assured and thereby leave the wife and children in destitution, as it may affect his business reputation adversely.

4. Any person may effect an insurance provided that he has an insurable interest in the life and property which he wishes to insure, otherwise the policy will be void. The Life Assurance Act commonly called the Gamb-

The assured to have an insurable interest.

ling Act makes necessary the existence of an insurable interest as the basis of the contract of insurance. It lays down, "whereas it hath been found by experience that the making of assurance on lives, and other events wherein the assured shall have no interest, has introduced a mischievous kind of gambling, be it enacted that from and after the passing of this Act no assurance shall be made by any person or company, on the life or lives of any person or persons or any other event whatsoever, wherein the person or persons for whose use, benefit or on whose account such policies shall be made, shall have no interest, or

by way of gaming or wagering ; and that every assurance made contrary to the true intent and meaning thereof, shall be *null* and *void* to all intents and purposes whatsoever. And be it further enacted that in all cases where the assured has an interest in such life or lives, event or events, no greater sum shall be recovered or received from the assurers than the amount or value of the interest of the assurers in such life or lives, event or events."

What is an insurable interest is not easy to explain. Lord Eldon said, "It is clear that the assured must have an interest whatever we understand by that term. In order to distinguish the intermediate thing between a strict right or a right derived under a contract and a mere expectation or hope which has been termed an insurable interest, it has been said in many cases to be that which amounts to a moral certainty. I have in vain, however, endeavoured to find a fit definition for that which is between a certainty and an expectation, nor am I able to point out what is an interest unless it be a right in the property or a right derivable out of some contracts about the property insured, which in either case may be lost upon some contingency affecting the possession or enjoyment of the party. Expectation, though founded upon the highest probability, is not interest, and it is equally not interest whatever might have been the chances in favour of the expectation." His Lordship continued, "Considering the caution with which the Legislature has provided against gambling by insurance upon fanciful property, it is certainly desirable that no purely sentimental interest, such as an expectation or an anxiety, should be made the ground of a Policy."\*

The following illustrations will make the position clear as to the parties who can effect assurance.

Who can have insurable interest?	A person's insurable interest is considered to be sufficient in his own life to entitle
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\* *Glasgow Parish County v. Martin*, (1910) S. C. (J.) 102.

him to recover whatever sum he may have insured for. A married woman may insure, and is presumed to have an insurable interest in the life of her husband. In the same way a husband is presumed to have such an interest in the life of his wife. A parent has not, by virtue of his relationship only, an insurable interest in the life of a child. If a parent is absolutely dependant for his livelihood upon his son or daughter it is presumed that such a parent has an insurable interest in his or her child. A son has an insurable interest in the life of a father who supports him, but not in the life of a father dependent on him for support. A surety has an insurable interest in the life of his co-surety to the extent of his proportion of the debt and also in the life of his principal debtor. A creditor has an insurable interest both in the life of his debtor and of any surety for his debt. The limit of the creditor's insurable interest is the amount of the debt at the time when the policy is granted.

5. Where the policy is obtained by a third party, *e. g.*, a creditor or a guarantor, and not by the person assured, the policy will be void unless the third party has an insurable interest of a pecuniary nature in the life of the debtor, subject to the condition that the debt exists at the time the policy is taken out. In such a case the creditor or guarantor can recover from the company even though the debt is afterwards extinguished. It is not uncommon with bankers to take out a policy on the life of a customer indebted to them. In general practice, however, the policy is effected by the debtor himself and then deposited as security with the banker.

6. The continuance of the policy is dependent upon the regular payment of the premia. When it is stipulated that premia shall be paid by the end of certain regular intervals, they must be so paid otherwise the policy becomes voidable at the option of the insurers, and thus by the

Policy dependent  
upon regular pay-  
ment of premia.

customer's non-payment of premia on their due dates, the banker stands a chance of losing the moneys advanced by him. If the banker undertakes to pay the premia as they fall due on a policy deposited with him he will be simply adding to the amount already advanced. Some insurance companies have very lately introduced the practice of issuing non-forfeitable policies. These policies do not lapse at the time the default is made in the payment of premia, but stand for some period thereafter. The assured during this period has the option of getting the policy renewed after the payment of unpaid premia and the interest which may vary from 9 to 12%.

In spite of the drawbacks given above, life policies are occasionally accepted by bankers as collateral security for advances. If the policy is a good one its great advantage as a security is that with the advent of time it increases in value and when it matures the full sum assured together with bonuses, if any, becomes payable in the event of the assured's death when it is a life policy or his attaining the age given in the policy if it is an endowment policy. Not infrequently, the payment received from the assurance company more than wipes off an overdraft. Moreover it is a liquid and convertible security at least to the extent of the cash surrender value of the policy. Particularly in the case of loans granted to parties who have fixed incomes terminable at death, the taking of such a security is a precaution which should not be ignored by any banker. Similarly, in the case of advances to a partnership whose success is largely dependent upon a certain partner, it is desirable both for the other partners as well as the banker advancing money to such a partnership without any good security to take out a policy on the life of the particular partner.

General precautions.

The following precautions should be taken by bankers while accepting such securities as cover for advances:—

1. The banker should peruse carefully the conditions and ascertain whether there are any restrictions likely to

affect its value as a security. In the case of some policies, such as those of the industrial type there is sometimes a restraint on assignment.

2. The banker should satisfy himself that in the case of a policy taken out by a third person he has an insurable interest in the life of the insured as explained above.

3. The banker should see that the age of the person on whose life the policy has been taken out has been admitted by the insurance company. If not, he should get the age admitted by either a separate letter or by endorsement on the policy, as otherwise in the case of death of the person the banker may find it difficult to produce the necessary evidence for the purpose. As a precautionary measure the banker may obtain a birth certificate or a copy of the horoscope of the customer and forward it to the company with the policy as evidence of the assured's age.

4. The banker must ascertain and satisfy himself that the premia have been paid up regularly and that future premia will be paid to the assurance company as they fall due.

5. Generally the banker should not advance more than the surrender value of the policy to be charged. In the event of an endowment policy which is to mature after a comparatively short period the banker may exceed his limit particularly when he is confident that his customer will continue to pay the premia. The banker should in his own interest from time to time obtain official quotations of the surrender value of the policy from the company. Ordinarily a life policy carries no surrender value till the first two or three premia have been paid. Policies which carry a risk of death within a certain specified period cannot be surrendered for cash.

6. From the banker's point of view, as in the case of immovable property, it is preferable to have a legal assignment

of the life policy.\* However, from the customer's point of view the simpler and more acceptable method of charging such securities is what is known as an equitable mortgage. The customer deposits the policy together with a written promise to assign the policy at the desire of the banker. In addition to its simplicity the equitable mortgage has this advantage over a legal assignment that on the payment of the advance no formal re-assignment of the policy is necessary. As against these advantages this mode of taking a life policy as a security has certain disadvantages. For instance, if the borrower refuses to assign the policy when called upon to do so the realisation of the security will be cumbrous. The banker has also to prevent the borrower from assigning the policy to some one else. There is also the danger of the borrower's assigning the policy to a third party. It is therefore desirable that the banker advancing money against the equitable mortgage of a life policy should give notice† in writing to the particular insurance company that he is an equitable mortgagee of the policy.

7. When the banker is satisfied with an equitable mortgage or a legal assignment, he should have a memorandum signed by his customer in which the customer should undertake to pay the premia punctually, and in case of his failure to do so authorise the banker to pay them and to charge the amount to his account. It should also be made clear that such payments would carry interest like the advance. The banker should see that all parties having interest in the policy must sign the assignment deed or the memorandum. If it is stated on the face of the policy that it is taken out for benefit of a particular person such as the wife of the assured, she must also sign the memorandum etc.

8. On receipt of notice of a second charge over a life policy deposited with him as security a banker should make

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\* For a specimen of a legal assignment of life policy by a customer to cover his liabilities, see Appendix A, Form No. 18.

† For a specimen of a form of notice, see Appendix A, Form No. 19.

banks in that country saw these companies competing with them in their banking business they also decided to offer to their customers the facilities provided by the Trust Companies. The same necessity has forced itself on banks in other countries and to-day they readily undertake the duties of trustees, executors or administrators of estates. Of late some Indian Joint Stock banks have also assumed these duties either by opening separate trust or administration departments or by starting subsidiary companies wholly owned and managed by them.

There is no gainsaying the fact that banks are naturally fitted for these services. Firstly, unlike individuals, banks have continuous existence and secondly, the amount of work they get enables them to engage specialists on their staff to execute commissions requiring special knowledge and experience. Thus, the various trusts would be managed more efficiently than what would be the case if each were administered individually. Moreover, the management would be economical as the overhead charges would be reduced. Besides, it is the banks which serve their communities best that have greatest prosperity. and by undertaking this work they increase their utility to the customers.

It should not, however, be forgotten that these services are not free from risks and it is therefore necessary for the banker to take certain precautions in the discharge of his duties as a trustee. While he should avoid putting unnecessary obstacles in the way of his *cestuis que trustent* it is unwise on his part to incur any risks which can be eschewed. He should act in accordance with the terms laid down in the trust instrument otherwise any divergence or infringement on his part is sure to make him liable for breach of trust and for any loss "which the trust property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being



competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his right as against the trustee."\* Again, he has to see that he does not mix trust funds with any other moneys, for, in case of difficulties, it is the general rule that everything will be presumed against the trustee. Courts are inclined to help only those trustees who act scrupulously and honestly in the administration of trusts, but give no support to those, who, however anxious they may appear to be to assist the beneficiaries, act without any regard for the directions laid down in the trust instrument. The best guiding principle for a banker would be to carry out strictly the terms of the trust, and in any case of real doubt get the question settled by making a petition to a principal Civil Court of original jurisdiction. The trustee stating in good faith the facts in such petition and acting upon the opinion, advice, or direction given by the Court shall be deemed so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.†

It should also not be ignored that according to the English Law a trustee of any property, whether for the use or the benefit of a private person, or for any public or charitable purpose, is liable to be convicted of a misdemeanour and sentenced to penal servitude if he is found guilty of converting or appropriating any part of the trust property to his own use or benefit.

The rights and duties of executors and administrators are practically the same except that the former must carry out the directions contained in the will of the deceased, whilst the latter, where there is no will, have nothing further to consider than the obligations laid upon them by the law. The need for an

As executors or administrators.

\* The Indian Trusts Act, 1882, S. 23.

† The Indian Trusts Act, 1882, S. 34.

administrator arises only when there is no will. There may be more than one executor of an estate, but a single administrator is usual.

In discharging their duties of executorship or administratorship bankers have to adhere closely to the will in the former case and to the terms of administratorship in the latter. They are required to issue notices in some of the leading dailies of the locality, calling upon creditors and others having claims against the deceased to send in their claims and prove the same on or before a fixed date. The notice goes on to declare that on the expiration of the fixed time the assets of the deceased will be distributed only among the claimants whose claims have been satisfactorily proved, and that the executors will not be liable to any person who failed to give proper notice and proof in support of his claim before the distribution of the assets. Although this method appears to absolve the executors completely, yet it does not prejudice the right of a creditor to follow the assets into the hands of any person who has received the same. If a banker pays a legacy of his own accord, he cannot compel the legatee to refund the money in order to pay other legatees, but it is just the reverse if he pays it under legal compulsion. If after payment of legacies, debts remain unpaid of which the executors had no notice at the time of payment, he can call on the legatee to repay, as a creditor whose debt has not been paid can compel a legatee to refund.

The banker undertaking the duties of an executor or administrator has to take scrupulous care in the payment of Court-fees. If as a result of over-valuation of the estate he has paid higher fees than were actually due he can apply for refund only on certain conditions. For example, if on applying for the probate of a will or letters of administration he has estimated the property of the deceased to be of greater value than the same has afterwards proved to be and has consequently paid too high a Court-fee thereon, he can, within six

months after the ascertainment of the true value of the property, apply for refund of excess charge to the Chief Controlling Revenue Authority for the local area in which the probate or letters has or have been granted. However, he will have to produce the probate or letters in question and deliver to the Chief Controlling Revenue Authority in the local area, a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation. The Chief Controlling Revenue Authority in the local area will have no objection in refunding the excess charge, if it is satisfied that a greater fee was paid on the probate or letters than the law required. Similarly if the fee paid is less than the one actually due the executor or administrator is subject to some penalties if it is due to his fraud or failure to ascertain the exact value of the estate. For instance, "where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the Chief Controlling Revenue Authority for the local area and pay what is wanted to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court-fee."\*

In acting as a constituted attorney of his customer, however, the banker is less liable to any such risks. All the provisions in the power of attorney are carefully worded and the banker's duty ends with his acting in accordance with them, and all acts done by him in such capacity shall be as

Banks as constituted Attorneys of their customers.

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\* Section 19-G, Indian Court-fees Act, 1870.

effectual as if they had been done by the customer himself. Sec. 3 of the Powers of Attorney Act, 1882, affords the following protection to an attorney :—

“Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency, or revocation was not, at the time of the payment or act, known to the person making or doing the same. But this section shall not affect any right against the payee on any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.” It goes without saying that a general power of attorney is not restricted by the mention of specific acts.

(4) *Serving as correspondents, or representatives of their customers, other banks or financial corporations :—*

Although these services are generally rendered *gratis* their value is not negligible. Especially it is the travelling customer who can well understand their worth. From the moment he sets his foot on foreign soil he realizes that, even when alone, he has one valuable friend who is always ready to help him—*viz.*, the local agent or correspondent of his bank at home.

As representatives of their customers banks carry on correspondence with income-tax authorities. They obtain passports, traveller's tickets and secure passages for their customers. They redirect their letters, and in fact do all they can to increase their serviceableness to their customers.

### MISCELLANEOUS SERVICES.

We shall now deal with miscellaneous subsidiary services rendered by modern banks, *i.e.*, services in the performance of

which the banker's position is not that of an agent for his customer. The chief among these are:—

- (1) *Receiving of securities, deeds or other valuables for safe custody ;*
- (2) *Underwriting loans to be raised by Governments, public bodies and trading corporations ;*
- (3) *Dealing in Foreign Exchanges ;*
- (4) *Serving as referee as to the financial standing, business reputation and respectability of their customers ;*
- (5) *Issuing of letters of credit, circular notes, bank drafts, traveller's cheques, etc.*

1. Receiving of valuables, *e.g.*, negotiable securities, jewellery, boxes of plate, and documents of title to property is not a recent addition to the bank's functions. Even the early goldsmiths in the City of London were familiar with this business, and in fact, modern banking is but a descendant of the safe custody business which is its historical origin. Even in ancient India, the money-lender was the only reliable agency for the safe deposit of cash, jewellery and other valuables. Moreover, being equipped with the safes and strong rooms for the purposes of its business, the modern bank is naturally a very convenient and safe place for storing valuables to be safeguarded against theft and fire.

The articles to be lodged for safe custody are either locked up in safe-deposit lockers rented by the customer in the Safe Deposit Vault or put in envelopes sealed with the customer's recognizable seal if they are deeds or securities. The outside of the locker or envelopes bears in bold letters the name of the depositing customer. Generally in such cases, the banker is left without any precise information about the contents of the boxes or envelopes if the key is kept with the depositor. The case is, however, different when a customer deposits some

bearer securities, *e.g.*, bonds with the banker asking him to cut off and present the coupons for payment as they become due.

As a rule, the customer is required to sign the counterfoil of a special form of receipt\* which is cut off from the safe custody receipt book and handed over to the customer in acknowledgment of the articles received for safe custody. The receipt generally contains a provision making it obligatory for the customer to surrender it in person duly discharged at the time of taking delivery of the articles deposited for safe custody. However, if the person is unable to attend personally, he is required to sign an order on the back of the receipt instructing the banker to deliver the relative articles to the bearer of the receipt. The genuineness of the signatures on the receipt surrendered by the customer or his agent can be verified by comparing it with the signature on the counterfoil.

Where the banker is informed about the contents of the box or envelope deposited, or where the articles are simply handed over to the bank to be kept for safe custody the particulars are entered as follows in the Register of Securities for Safe Custody:—

M. K. SHROFF, ESQUIRE, BAR-AT-LAW,  
30, Hornby Road, Bombay.

Date.	Initials of the receiving Officer.	NOMINAL AMOUNT.		Description of Stock.	Number of Receipt issued.	How disposed of.	Initials of the Surrendering Officer.
		Bonds.	Certificates.				
2-3-1928	S. K. H. J. N. A.	Rs. 4,000	.....	5 % War Bonds, 1928	79	Returned 7th May 1933. Receipt No. 30	S. K. H. J. N. A.
6-6-1928	S. K. H. J. N. A.	.....	Rs 3,000	30 Indo-Burma Petroleum Preference Share Certificate No 19073	79	.....	.....

\* For a specimen of a Safe Custody Deposit Receipt, see Appendix A, Form No. 22.

Similarly a Register of Boxes may be maintained in which all the locked boxes received for safe custody and their owners' names may be entered. The outer description of each box with its distinctive number should also be noted in the register. As banks cannot afford to handle and assume responsibility for valuables, of the nature and value of which they have no idea and no adequate means of determining, it is in their interests to commit the box-renter in advance as to the nature and value of the contents and the terms on which they are to be handled. The bank cannot merely rely upon the records and statements of the box-renter and his agent, who may themselves be the parties asserting false and erroneous claims against the bank. Where the key of the locker allotted to the customer in the bank's vault is kept by him the banker should, besides protecting the contents of the locker against destruction and unlawful interference by outside parties, conduct and operate his safe deposit business in such a manner as will preclude the box-renter from attributing to the former the responsibility for losses or disappearances resulting from the latter's own carelessness or negligence of his deputies.

In accepting articles for safe custody the banker's position is that of a bailee, *i.e.*, a person to whom goods are delivered in trust under a contract and who is responsible for the custody and safe return of the articles deposited according to the terms of bailment. The banker being a mere bailee it goes without saying that the property in the valuables deposited cannot pass to him.

It is generally assumed that when no special charge is made by the banker for keeping valuables for safe custody, he is to be regarded as a gratuitous bailee, and as such, is liable only for gross negligence.\* In other words he will be responsible for the consequences of any omission on his part to

Gratuitous bailee distinguished from bailee for reward.

\* *Doorman v. Jenkins*, (1834) 2 A. & E. 256.

utilize the best means and facilities at his disposal. However, as a banker is supposed to make profits by opening current and savings bank accounts his position according to some is that of bailee for reward and even when he makes no special charge it will hardly be any defence for him to allege in case of loss of the valuables that he being an unpaid bailee cannot be expected to take more than ordinary care. On the contrary, the banker being a professional safe-custodian, has to use his experience and skill even if he takes charge of the articles gratuitously or else he would be held liable for gross negligence.\* Being a guardian of "credit and capital" he is expected to take more than ordinary care.

Negligence, as we have already seen in an earlier part of this work, is an omission to do something which a reasonable man guided by the ordinary considerations which regulate the conduct of human affairs, would do, or the doing of something which a reasonable person, similarly circumstanced, would not do. It may arise in many forms. Just as a doctor professing himself to be specially qualified in the art of healing others can be held liable for negligence if he fails to show such adequate skill or knowledge when attending to a patient, similarly, a banker who is a professional caretaker of his customer's valuables will be liable to them for damages for any loss resulting from his negligence in safeguarding the articles. For instance, he will be liable if the Safe Deposit Vault is not strong enough and burglars break in and make off with the valuables. Or again, if through some mistake on the part of the banker, the entrance to the vault is left unlocked, or the arrangement for the watch is unsatisfactory, or access to the vault is allowed to all and sundry, the banker cannot escape liability in case

Banker's liability  
for negligence.

\* *Shiells v. Blackburne*, 1789.



of any loss. Similarly, if the situation of the vault is unsafe or open to any danger of fire from a neighbouring chemical laboratory, workshop or a store of explosives or ammunitions, the banker can be held liable for having failed to take due precautions in preventing such accidents. As another instance of negligence it may be mentioned that when a banker holds for safe custody some bonds which are periodically drawn for payment he will be held liable for the loss due to his failure to present them for collection at the right time. The liability on this score, however, will arise only if he has access to the bonds. He will incur no liability, if they are in sealed envelopes in a safe-deposit locker the key of which is with the depositor. In any case, the banker will be liable only when the loss is a result of negligence on his part. He cannot be held responsible for any loss resulting from deterioration of the goods due to long storage. Where an agent or a representative of the customer, is with the latter's authority, allowed access to the vault occasionally to examine or remove some of the valuables, the banker should accompany him to see that he does not act beyond his principal's authority.

Conversion is the unauthorized act of dealing with goods or chattels which are property of another person. In other words, it is the performance of an unauthorized act which deprives another of his property permanently or for an indefinite time. Thus, a banker delivering to some third person—who has no authority from the customer to receive his valuables which he deposited for safe custody—can be sued for conversion. Consequently, before handing over the valuables to a third party the banker should satisfy himself that the person is duly authorized by the customer to receive them. He can verify the genuineness of the customer's signature by comparing it with his specimen signature on the counterfoil of the receipt issued to him at the time of the deposit. When he has some ground for suspecting the genuineness of the order

demanding delivery of the articles, he should withhold the delivery for a reasonable period in order to make enquiries. Generally, the danger of wrong delivery can be obviated if the banker insists upon sending the articles by a member of the bank staff to the customer's own residence or place of business. In case the property deposited turns out to be a stolen one the banker may safely deliver it to the true owner even without his customer's authority after fully satisfying himself as to the third party's title to it.

Besides the proper safe-guarding of the valuables in a manner affording full protection to the banker against their destruction or unlawful interference by outside parties and avoiding his liability for damages on that account, the banker must conduct and operate his safe deposit business in such a manner as will preclude his depositor's attributing to him the responsibility for loss or disappearance resulting from the former's own careless or absent-minded acts or the negligence of his agent or deputy. The following are some of the general precautions to be adopted and followed by a banker in the safe custody business:—

General precautions in Safe Custody Business.

1. The first important precaution a banker should take when he receives articles for safe custody is to ask the customer to declare the contents of the box or envelope, together with their approximate value. The need for this measure of precaution will be realized when a customer falsely alleges that some of the contents of the box or parcel left in safe custody vault of the bank are missing. It can scarcely be doubted that the loss or disappearance in the absence of any inventory of the contents with the banker, will be properly attributable to the persons who handled those properties or who had access to the Safe Deposit Vault of the bank.

To ask for a declaration of the contents.

Consequently, if it is proved that the performance of certain services by the bank employees involved their handling or access to those properties at any time during the period of their deposit, then the loss can be plausibly attributed to them. In that case, if the bank is not armed with the information or knowledge as to either the amount or description of the properties originally deposited it will find it impossible to disprove the error or falsity of the claim. The bank may well try to prove that under its careful guard and system of preventing access to its vaults, that under its rigid rules and system of management none of its employees had ever had access to or was associated in handling those valuables, but the false claim would be more easily refuted if the bank had already insisted on having an inventory of the contents of the box or envelope.

2. The banker should preferably try to have the exclusive possession and custody of the property left with him for safe custody, and the sole right of access to it during the period of its deposit with him just as an ordinary custodian, warehouse-man or a bailee would do. If the depositor is vested with the right of access to and the custody, possession and control of valuables left in the banker's vault, the banker should avoid the rendering of services involving his handling of them and in case he agrees to do so it will be absolutely essential for him to take scrupulous care for safeguarding the valuables. Especially when the customer deposes an agent for the purpose of removing specific articles from the box, the banker should see that the said agent does not remove any other valuables or securities not authorized by the customer. Bankers have, however, to make exceptions and allow access to their customers to their vaults with due precautions.

To take exclusive possession of valuables stored.

3. Where a banker has decided to make an exception in case of a particular customer he has to be extremely careful. For example if he decides to accede to the request of a customer who changes his residence to a city some distance away from the city where he rented a safe deposit box containing valuables and asks the banker without attending the bank in person to remove the contents of his box to the city of his new residence, the banker should insist on the customer's giving in writing a detailed list and value of the properties in the box, together with complete instructions as to the manner in which they are to be transported, the amount for which they are to be insured for the purpose of transportation and the company through which their transportation is to be arranged. On customer's furnishing the banker with the necessary declarations and information, the banker may open the box, make an inventory of the contents, pack them carefully, all in the presence of several witnesses and ship the package in accordance with the box-renter's instructions. A mere verbal message on the telephone from the customer will not suffice and in no case should a banker offer to handle and assume even temporary custody of properties, of the amount and description of which he has no knowledge.

In addition to the general precautions stated above a banker has to take certain other measures to avoid any risks that may arise when he is dealing with certain special types of customers.

When the articles are deposited by two or more persons jointly the banker should get the specimen of the signatures of each of them on the counterfoil of the Safe Deposit Receipt. Some bankers have a special form\* for the purpose in which the persons to whom access is authorized are required to append

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\* For specimen, see Appendix A, Form No. 23.

specimens of their signatures. These persons to whom access is granted may be representatives whose rights of access may be either jointly or severally dependent on the joint rental contract which the bank is obligated at its peril to carry out explicitly. Upon proper proof of the death of one or two of the joint renters the bank will incur no liability in making delivery of the valuables to the survivor or survivors if it has no notice that the parties depositing the valuables held them in their capacity as trustees.

The articles deposited by trustees are under their joint control. Consequently the banker will act upon the instructions signed by all the trustees. In *Mendes v. Guedalla*,\* where one of the three trustees had the key of a box containing bearer securities lodged with the bank for safe custody in the name of all the three trustees, who authorized him to cut off the coupons half yearly in order to present them for payment, removed certain other articles from the box, it was held that as the box was stored at the banker's in trust for all the three trustees "they ought not to have parted with it, or allowed more than the coupons to be taken out, without the authority of all the three trustees." The banker should take particular care that he has the authority of all the trustees before he parts with or disposes of in any way the property deposited with him.

In case the party depositing the valuables dies the banker may deliver them to the personal representatives of the deceased when they produce the probate or letters of administration, and obtain their signatures. But when the will happens to be in the box lodged for safe custody the banker may open the box in the presence of a near relative of the deceased and the will may be handed over to the executors against their signatures. The remaining contents of the box should not be delivered to them until the probate or letter of administration is produced.

Executors and administrators.

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\* (1862) 2 J. & H. 259.

Agents, representatives, etc. Lastly, the banker should be careful while dealing with agents, officials and representatives of corporations, partnerships, and organizations of various kinds when acting as constituted attorneys, and must satisfy himself that their acts are within the proper scope of the authority granted to them in the powers of attorney.

Banker's Lien and Safe Custody Deposits. It has been already discussed at length\* that the articles for safe custody being deposited for a specific purpose are not subject to the banker's lien. However, when stock or shares registered in the name of the customer are deposited with the bank for safe custody and instructions are given by the customer to the relative companies that dividends and interest warrants should be forwarded to his bank directly for the credit of his account the banker's lien can be enforced against the warrants which will be held by him in the ordinary course of his business. When the customer deposits bills for safe custody until maturity, and instructs the banker to present them for collection and payment on the due dates the banker can exercise his lien against the proceeds because although originally deposited for a specific purpose they are subsequently handled by him in the ordinary course of his usual banking business. Securities or valuables deposited in the first instance, for safe custody can be tendered as cover for an advance at the customer's option. However, the banker must take a memorandum stating the purpose of the new deposit lest he be deprived of the right of his lien on the securities.

## II. *Underwriting loans to be raised by governments, public bodies and trading corporations.*

In most countries of the world the governments entrust the underwriting of loans to the State banks which charge a

\* See page 48 *supra*.

commission for this service. In India these services are sometimes performed by the Imperial Bank of India. Occasionally other Joint Stock banks in India are employed by local authorities, companies or corporations for underwriting loans and debentures raised by them.

### III. *Dealing in Foreign Exchanges.*

As a rule Indian Joint Stock banks have not been doing this business on a large scale. Of late, however, some of them have commenced it but their progress in this direction is not likely to be satisfactory on account of the special advantages enjoyed by the exchange banks working in this country.

### IV. *Acting as referees as to the financial status, business reputation and respectability of their customers.*

The great utility of this function of the modern bank is quite evident. Firstly, it is very helpful to the businessmen generally as it furnishes them with reliable and prompt information as to the financial standing of the people with whom they are dealing. Secondly, by thus supplying the information they enable the business community to avoid incurring loss through giving credit to persons of little or no financial worth.

The banker's position as a referee for the financial standing as well as the necessary precaution to be taken by him have already been discussed.\*

### V. *Issuing of letters of credit, circular notes, banker's drafts, traveller's cheques, etc.*

To increase its utility to its customers and to enable them to benefit from its reputation for solvency and prompt payment the modern bank is always ready to issue letters of credit, circular notes, banker's drafts, traveller's cheques, etc. for the convenience of its customers.

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\* See page 53 *supra*.

A Letter of Credit\* is a document or order by a banker, in one place, authorizing some other banker, acting as his agent or correspondent in another place, to honour the drafts or cheques of a specified person named in the document, up to an amount stated in the letter and to charge the total amount of drafts honoured or payments made to the grantor of the letter of credit. The particulars of all the drafts or cheques drawn by the specified person against the credit are required to be endorsed at the back of the letter of credit so that anybody can find how much of the credit allowed is utilized and how much is still outstanding. The agent or the correspondent has to be careful that the drafts or cheques drawn on the authority of the letter of credit are strictly in accordance with its terms. For instance, he should not honour any draft which is drawn after the time for which the letter of credit is issued.

Letters of Credit may be classified under two heads; (1) Ordinary Letters of Credit and (2) Guarantee Letters of Credit. In case of the former the Banker generally requires the person at whose request the Letter of Credit is to be issued to deposit the amount of the credit or its equivalent at the current rate of exchange on the understanding that any portion of the credit not made use of would be refunded to the person. In the latter case the banker is usually satisfied if the customer keeps sufficient amount at the credit of his account or deposits sufficient securities so as to justify the banker to allow his customer to overdraw his current account if and when he has to make use of his credit. This arrangement is to the advantage of the customer who need not part with the whole amount of the Letter of Credit. If by the use of the credit his account is overdrawn he pays interest only on that portion of the credit which he utilizes. Further, this

\* For specimen, see Appendix A, Form No. 24.



arrangement will enable him to save loss on exchange and re-exchange.

A letter of credit gives an authority to the specific person to draw bills on the issuing bank according to the terms of the letter, and contains a promise by the issuing banker to accept all the bills drawn according to his instructions. When the promise to accept is conditional, as for example, when it says that the documents of title to the goods in respect of which the bills are drawn shall be sent to the issuing bank together with the bills for acceptance the letter is called a Documentary Letter of Credit.\* In this case the banker may not require any special guarantee and may be satisfied with a small deposit as he will have the security of the merchandise shipped.

Letters of Credit being neither negotiable nor transferable the paying agent or correspondent has to satisfy himself about the genuineness of the signature of the person named in the letter. To facilitate the identification the paying banker should be supplied with a specimen of the signature of the person who is entitled to draw the money or the banker negotiating the drafts has to satisfy himself in some other way.

To mention all the various forms of Letters of Credit and their innumerable advantages would be out of the scope of this book. However, it will suffice for our purposes to understand their service in facilitating commercial relations between merchants of different countries and helping in financing the shipment of merchandise from one country to another. For example, when an importer in India gets his banker to issue a letter of credit undertaking to accept bills up to a certain amount drawn by a merchant in America, the latter will have no objection in shipping goods or merchandise as the acceptance of his bills will be assured by the bank.

\* For specimen, see Appendix A, Form No. 25.

**Circular Letters of Credit and Circular Notes.** Circular letters of credit and circular notes\* are forms of letters of credit addressed to the issuing banker's foreign correspondents and agents generally, the list of their names and addresses being given in the Letter of Indication† which accompanies the circular letter or notes. They are issued in favour of customers requiring money at different places they intend to visit. At the back or foot of the letter particulars of the various payments—viz., date when paid, by whom paid, name of town where paid, amount in words and figures—are added. For purposes of safety, and protection against forgery in case the Letter of Credit falls into improper hands the bearer is generally put on his guard by the banker by adding a note at the foot of the Letter that immediately on receipt of the Letter of Indication and Circular Letter of Credit, the bearer is requested to put his or her signature to the Letter of Indication and to keep it apart from the Circular Letter of Credit.

Circular notes differ from Circular Letters of Credit in that the former are for certain round sums generally in the currency of the country of the issuing bank. On the reverse side of the circular note are instructions to the agents and correspondents of the issuing bank giving the name of the holder and the number of the Letter of Indication supplied to him.

**Banker's drafts.** A banker's draft is an order addressed by one bank to another or by one office to another of the same bank to pay a specified sum to a named payee or to his order. Although bearing close resemblance to cheques in England they are not regarded as cheques when the drawer and the drawee are branches or offices of the same bank. In India, however, they can be treated as cheques.‡ When the drawer and the drawee are situated in different

\* For specimen, see Appendix A, Form No. 26.

† For specimen, see Appendix A, Form No. 27.

‡ Vide page, 148.

countries banker's drafts are more or less similar to letters of credit, the only difference being that they are for definite amounts whereas a letter of credit allows the drawing of amounts upto a certain maximum. The latter being rather vague are consequently neither negotiable nor transferable.

Traveller's cheques\* bear a striking resemblance to circular notes with the exception that they do not require any letter of indication. Like the circular notes they are generally drawn for certain round sums and are cashable at the current exchange rate. They are all signed by the drawer and witnessed at the time of issue and the drawer has only to endorse them when wishing to get them cashed. By thus endorsing the cheque in the foreign agent's presence the drawer enables him to compare it with the original signature.

The above are only a few of the innumerable services of a Joint Stock bank which is trying its level best to make itself of evergrowing help to its customers. In fact, it will not be too much for us to say that the modern bank is the true friend of the customer of whatever standing.

\* For specimen, see Form No. 28, Appendix A.

# APPENDIX A.

## FORM No. 1.

*Form of Statement to be published by Banking and Insurance Companies and Deposit, Provident or Benefit Societies.*

\* The share capital of the company is Rs.——— -divided into shares of Rs.———each.

The number of the shares issued is———. Calls to the amount of Rs.———per share have been made, under which the sum of Rs.———has been received.

The Liabilities of the company on the thirty-first day of December or (thirtieth of June) were :—

Debts owing to sundry persons by the company.

Under decree, Rs

On mortgage or bonds, Rs.

On notes, bills or hundies, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The Assets of the company on that day were :—

Government securities (stating them), Rs.

Bills of exchange, hundies and promissory notes, Rs.

Cash at the Bankers, Rs.

Other Securities, Rs.

\* If the company has no capital divided into shares, the portion of the statement relating to capital and share must be omitted.

of \_\_\_\_\_  
Balance Sheet as at

Capital and Liabilities.	Rs.	a.	p.	Rs.	a.	p.
<b>CAPITAL—</b>						
Authorized Capital.....Shares of						
Rs.....each .....	...	...	...			
Issued Capital.....Shares of						
Rs.....each .....	...	...	...			
Subscribed Capital.....Shares of						
Rs.....each .....	...	...	...			
Amount called up at Rs.....per						
share ... ..	...	...	...			
Less—Calls unpaid .....	...	...	...			
Add—Forfeited shares (amount paid up)...	...	...	...			
<b>LOANS ON MORTGAGE OR MORT- GAGE DEBENTURE.</b>						
Bonds .....	...	...	...			
Reserve .....	...	...	...			
(Details of separate funds, if any, may be given) .....	...	...	...			
<b>LIABILITIES —</b>						
Current and Savings Bank Deposits ...	...	...	...			
Fixed Deposits ... ..	...	...	...			
Debts due to Banks, Agents, etc., fully secured against securities <i>per</i> <i>contra</i> .....	...	...	...			
Debts due to Banks, Agents, etc., un- secured .....	...	...	...			
Bills payable .....	...	...	...			
Sundry Creditors .....	...	...	...			
Unclaimed Dividends .....	...	...	...			
<b>ACCEPTANCES FOR CUSTOMERS <i>per</i> <i>contra</i> .....</b>						
Bills for collection being Bills Receivable <i>per contra</i> .....	...	...	...			
<b>PROFITS AND LOSS—</b>						
Balance as per previous Balance Sheet .....	...	...	...			
Less—Appropriation thereof .....	...	...	...			
Balance Brought Forward ... ..	...	...	...			
Profit since last Balance Sheet .....	...	...	...			
<b>CONTINGENT LIABILITIES</b> .....						

No. 1 (a)  
**SHEET,***Ltd.*19

Property and Assets.		Rs. a. p.			Rs. a. p.		
<b>CASH—</b>							
Cash in hand and at Bankers	...	...	...	...			
Deposits at Call and Short Notice	...	...	...	...			
Bullion in hand	...	...	...	...			
<b>INVESTMENTS—</b>							
Gilt-edged and Trustee Securities	...	...	...	...			
Debentures	...	...	...	...			
Other items	...	...	...	...			
(N.B.—It should be stated here that the abovementioned securities have been valued on the basis that "the valuation is not in excess of cost or market price, whichever is the lower." If the securities stand at a value in excess of that basis, the amount by which their value exceeds that basis should be given.)							
<b>BILLS RECEIVABLE <i>per contra</i></b>	...				...	...	...
<b>LOANS AND OTHER ADVANCES—</b>							
Cash Credits and Demand Advances	...	...	...	...			
Loans	...	...	...	...			
Bills Discounted	...	...	...	...			
Sundry debtors and Debit balances	...	...	...	...			
(N.B.—The following statement should here be appended:—"These Loans and Advances are shown after deducting full provision for Doubtful Debts.")							
If this has not been done, any balance of doubtful debts not fully provided for should be shown in (3) below).							
Included in the abovementioned total are the following:—							
(1) Debts due by directors or officers of the Bank	...	...	...	...			
(2) Other debts for the repayment of which a director is responsible as guarantor or otherwise	...	...	...	...			
(3) Doubtful debts not fully provided for.	...	...	...	...	...	...	...
<b>DUE FROM CUSTOMERS FOR</b>							
<b>ACCEPTANCES <i>per contra</i></b>	...	...	...	...			
Lands and Buildings (at cost)	...	...	...	...			
Less Depreciation written off	...	...	...	...			
Furniture and Fixtures (at cost)	...	...	...	...			
Less Depreciation written off	...	...	...	...			
Other Assets	...	...	...	...			
Profit and Loss (giving in the case of a debit balance details as far as possible as in the case of credit balance)	...				...	...	...

## FORM No. 2.

*Form of Mandate or Authority for a person to draw upon another person's account.*

To

THE MANAGER,

\_\_\_\_\_ BANK LTD ,

DEAR SIR,

I hereby authorise you to honour all cheques drawn on my account with you by \_\_\_\_\_ whose specimen signature is given below, notwithstanding that such cheques may create an overdraft or increase it to any extent, and who is authorised also to make, draw and indorse and accept or otherwise sign any bills of exchange, promissory notes or other negotiable instruments and to discount the same with your bank or otherwise, and also to indorse cheques or other negotiable instruments of any kind.

This authority shall continue in force until I revoke it by a notice in writing delivered to you.

Yours truly,

*Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19*

Specimen signature of the person authorised to sign —

To  
THE MANAGER,

FORM No. 2 (a).

\_\_\_\_\_BANK LTD.,  
\_\_\_\_\_

SIR,

Being desirous of opening a current deposit account with \_\_\_\_\_  
Bank Limited, I/we beg to hand you a remittance as per memo. at foot.

I/We agree to be bound by the Bank's Rules, a copy of which has  
been supplied.\*

Special Instructions. { \_\_\_\_\_  
\_\_\_\_\_

Yours faithfully,

Title of the A/c \_\_\_\_\_  
\_\_\_\_\_

Business or Profession. } \_\_\_\_\_  
\_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* To be used in the case of firms and limited liability companies.

*Names of Partners, Directors, Agents, etc.*

*Specimen Signatures.*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Introduced by—*

*Memo of amount sent—*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## FORM No. 2 (b).

To

THE MANAGER,

.                      \_\_\_\_\_ BANK LTD.,

DEAR SIR,

As the firm of-

have dealings with your Bank, we beg to inform you that we, the undersigned, are the partners in the said firm. We jointly and severally undertake responsibility to the Bank for the liabilities of the firm with the Bank. The Bank may recover its claims from the estate of any or all of the partners of the firm.

Whenever any change occurs in our partnership we undertake to inform the Bank of the same in writing and our individual responsibility to the Bank will continue until we receive from the Bank an acknowledgment of that letter and until all our liabilities with the Bank are discharged.

Yours faithfully,

To be signed here }  
by each partner of }  
the firm.                }

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## FORM No. 2 (c).

*Mandate or Authority for Society or Club.*

To

THE \_\_\_\_\_ BANK LTD.,  
\_\_\_\_\_Copy of the Resolutions passed by the \_\_\_\_\_ of the \_\_\_\_\_  
at their meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

1. "That the \_\_\_\_\_ Bank, Limited, be and are hereby appointed Bankers to the \_\_\_\_\_
2. "That all cheques on the banking account be signed and all bills, notes, and other negotiable instruments be drawn, accepted, and made on behalf of the \_\_\_\_\_ by or any \_\_\_\_\_ or more of them.
3. "That cheques, bills, notes, and other negotiable instruments payable to the \_\_\_\_\_ may be endorsed for the \_\_\_\_\_ by any one or more of the persons mentioned in the Resolution No. \_\_\_\_\_ or by the secretary of the \_\_\_\_\_ for the time being.
4. "That a copy of the Resolutions (under the Common Seal and) signed by the Chairman, be handed to the Bank together with specimens of the necessary signatures."

I certify that the Resolutions of which the above are copies, were fully passed at a meeting of the \_\_\_\_\_ held on the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

As witness (the Common Seal\* of the \_\_\_\_\_ and) the signature of myself as Chairman of the said meeting, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

\_\_\_\_\_ Chairman.

Countersigned by \_\_\_\_\_ Secretary.

The following are the signatures of the persons mentioned in the above resolutions:—

- 1 \_\_\_\_\_
- 2 \_\_\_\_\_
- 3 \_\_\_\_\_

---

\* Strike out words in the brackets where there is no seal.

## FORM No 2 (d).

Cheque No. \_\_\_\_\_

Returned for Reason No. \_\_\_\_\_

- 
1. Effects not yet cleared, please present again.
  2. Not arranged for.
  3. Payee's endorsement required.
  4. Payee's endorsement irregular.
  5. Payee's endorsement illegible.
  6. Refer to Drawer.
  7. Drawer's signature differs from specimen filed in this office.
  8. Endorsement requires Bank's guarantee.
  9. Alteration requires drawer's signature in full.
  10. Cheque is post-dated.
  11. Cheque is out of date.
  12. Exceeds arrangement.
  13. Amount in words and figures differs.
  14. Crossed cheque must be presented through a Bank.
  15. No advice.
  16. Payment stopped by the Drawer.
  17. Full cover not received.
  18. Vernacular endorsement requires confirmation.
  19. Mutilation.
  20. \_\_\_\_\_

\_\_\_\_ Bank Ltd., }  
\_\_\_\_ }  
Dated \_\_\_\_\_ 19 . }

Agent.  
Chief Accountant.

## FORM No. 2 (e).

To

THE AGENT,

THE \_\_\_\_\_ BANK LTD,  
\_\_\_\_\_

DEAR SIR,

I  
We beg to inform you that all the money deposited in the

Fixed Deposit AccountCurrent AccountSavings Bank Accountstanding in my name in your books is the personal  
our

or self-acquired property of myself  
ourselves and is not the property of a Joint  
Hindu Family.

Yours faithfully,  
  
\_\_\_\_\_

## FORM No. 3.

*Protest of a Bill for Non-Acceptance.*

On this the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and \_\_\_\_\_ at the request of A. B., of \_\_\_\_\_, merchant, and holder of the original bill of exchange, a true copy of which is on the other side written (or is underwritten), I, \_\_\_\_\_ of the said City, Notary Public by royal (or lawful) authority duly admitted and sworn, did produce and exhibit the said original bill of exchange to \_\_\_\_\_ on whom it was drawn at (his address) for acceptance, and demanded acceptance thereof to which he replied that it would not be accepted at present (or the answer given). Wherefore, I, the said Notary, at the request aforesaid did protest and by these presents do solemnly protest against the drawer of the said bill of exchange and all other parties thereto, and all others whom it doth or may concern, for exchange, re-exchange, all costs, damages, charges and interest already incurred and to be hereafter incurred by reason of the non-acceptance of the said bill of exchange. Thus done and protested at \_\_\_\_\_ in the presence of \_\_\_\_\_ & \_\_\_\_\_ witnesses.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and \_\_\_\_\_.

which I attest.

\_\_\_\_\_  
*Notary Public.*

APPENDIX A.

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FORM No. 4.

*Notice of Dishonour.*

Address \_\_\_\_\_

Date \_\_\_\_\_ 19 .

To \_\_\_\_\_  
\_\_\_\_\_

DEAR SIR,

I hereby give you notice that the undermentioned bill upon which you are liable as drawer (or indorser) has been dishonoured for non-payment (or non-acceptance). I have to request immediate payment of the amount of the said bill for Rs. \_\_\_\_\_ together with expenses amounting to total Rs. \_\_\_\_\_.

Yours faithfully,

Amount \_\_\_\_\_

Date \_\_\_\_\_ Tenor \_\_\_\_\_ Due \_\_\_\_\_

Drawer \_\_\_\_\_

Acceptor \_\_\_\_\_

Indorsers \_\_\_\_\_

Payable at \_\_\_\_\_

Answer given \_\_\_\_\_  
  
\_\_\_\_\_

## FORM No. 5.

*Confidential Inquiry as to the Status of a Customer.*

THE \_\_\_\_\_ BANK LTD.,

No. \_\_\_\_\_

Date \_\_\_\_\_ 19 .

To \_\_\_\_\_  
\_\_\_\_\_

DEAR SIR,

We shall be much obliged if you will favour us with an opinion as to the means, standing, and respectability of the undermentioned.

Any information you may favour us with will be treated as strictly private and confidential.

Name \_\_\_\_\_

Designation \_\_\_\_\_

Address \_\_\_\_\_

Yours faithfully,

\_\_\_\_\_  
*Manager.*  
  
\_\_\_\_\_

## FORM No. 5 (a).

*Private and Confidential*\_\_\_\_\_  
BANK LTD.,

No. \_\_\_\_\_

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEAR SIR,

As desired by you in your letter of the \_\_\_\_\_, the enclosed report is being communicated to you in the strictest confidence and without responsibility or guarantee on the part of this bank or any of its officers.

This letter is sent on the condition that the name of this bank will not be disclosed in the event of our report being passed by you.

Yours faithfully,

\_\_\_\_\_  
*Manager.*

## FORM No. 6.

*Authority to pay Dividends to Banker.*

No. \_\_\_\_\_

Date \_\_\_\_\_ 19 \_\_\_\_

To

THE \_\_\_\_\_ CO., LTD.,  
\_\_\_\_\_

GENTLEMEN,

Re \_\_\_\_\_  
\_\_\_\_\_

I request you to pay all dividends from time to time falling due or becoming payable on the above shares now of at any time standing in my name in the company's books to the \_\_\_\_\_ Bank Ltd., \_\_\_\_\_ or order, whose receipt shall be your full and sufficient discharge.

Yours truly,  
\_\_\_\_\_



## FORM No. 7.

*Application for Advances.*Branch...*Mockton-on-Sea.*Name of the customer...*Charles Richard Ros.*Particulars of business of Applicant...*80, High Road, Mockton,  
Ironmonger.*General character of customer...*Middle-aged and successful business-  
man.*Date when account was opened...*July 1904.*Introduced by ..*Henry Doe, Brother-in-law.*Has he any other connection with the bank ?...*His brothers-in-law  
have good accounts.*Purpose stated for which advance is required...*Buying freehold of 90,  
Elm Street for his daughter who will shortly be married.*Proposed terms...*1 % above Bank Rate...minimum 5 % ...commission  
£ 10 : 10 p. a.*

Advance.	At present running.	Proposed increase	Total.
Discount of Bills and Promissory Notes ...	<i>Nil.</i>	<i>Nil.</i>	<i>Nil.</i>
Overdrafts ... ..	<i>Nil.</i>	<i>£ 1000</i>	<i>£ 1000</i>
Loan ... ..	<i>Nil.</i>	<i>Nil.</i>	<i>Nil.</i>
Total ...	<i>Nil.</i>	<i>£ 1000</i>	<i>£ 1000</i>

Contingent liability on Guarantees, Endorsements...*£ 120 on trade bills  
discounted for Henry Doe.*

## FORM No. 7—Continued.

Securities.	For Present Advance.	Proposed Securities for increase.	Total.
Discount of Bills and Promissory Notes ... ..	Nil.	Nil.	Nil.
Stock Exchange Securities ...	Nil.	£500	£500
Guarantees or other Collateral ...	Nil.	Nil.	Nil.
Leasehold, Freehold, or Copyhold			
Land and Buildings ... ..	Nil.	£800	£800
Miscellaneous ... ..	Nil.	Nil.	Nil.
Total ...	Nil.	£1300	£1300

*Particulars of Customer's Account.*

DEPOSIT ACCOUNT.			CURRENT ACCOUNT.			
Maximum.	Minimum.	Average.	Maximum.	Minimum.	Average.	Turn-over.
£670	£320	£480	£320	£120	£270	£3090

Manager's observations :...Although Mr. Roe has a balance of £455 on Deposit Account and £157 on Current Account, he states that he will require all the available cash at his disposal to set up a branch shop he is contemplating opening in Broad Street.

Passed by,

O. Y. NOLAN,

Managing Director.

Signature of Manager,

A. L. Bank.

FORM No. 7—*Concluded.**Details of Securities now offered.*

1. Bills of Exchange and Promissory Notes	... Nil.
Have any bills been previously dishonoured? <i>No.</i> Are there any indications of redrawing? <i>No.</i>	
2. Stock Exchange Securities	... £500/-
Particulars.....£500 5% War Loan 1929-41 <i>regd.</i> ..... If registered state whether to be transferred into the names of the Bank's nominees..... <i>u/n of Mr. Dilly and Mr. Dally.</i>	
Value, if quoted at what price... <i>101½ = £500.</i> .....If unquoted, has brokers' opinion been taken as to their value?	
3. Guarantees or other Collateral	... Nil.
Particulars..... Relation of guarantor to customer,.....	
4. Leasehold, Freehold, or Copyhold and Building	... £800
Address... <i>90, Elm Street, Mockton-on Sea</i> Particulars... <i>Good class residential villa, freehold.</i> Manager's valuation for purpose of this advance... <i>£600.</i> Surveyor's valuation... <i>£1100 (Dun, Brown) being bought by Mr. Roe for £1000.</i> Assessed to Rates at..... <i>£900.</i> If let annual rental..... <i>£105.</i> Rates... <i>£35 (paid by tenant).</i> ..... Ground Rent..... <i>£5.</i> Net Rental . <i>£85..... value at years' purchase £850</i> Insured against fire in... <i>Atlas Fire Insurance Co. £1000.</i> If in Land Registry Area, registered with what title?..... Or has title been abstracted and verified? <i>Wait and See</i> <i>Mr. Roe will give bank a legal mortgage if necessary.</i> Is there any record of any prior mortgage? <i>No.</i>	
5. Miscellaneous	... Nil.
<i>Total estimated value of Securities</i>	
	£1300

## FORM No. 8.

*Form of Guarantee.*

Place and Date \_\_\_\_\_ 19 .

To

THE \_\_\_\_\_ BANK LTD.  
  
\_\_\_\_\_

GENTLEMEN,

*In consideration of your advancing to \_\_\_\_\_ trading as \_\_\_\_\_ the sum of Rs. \_\_\_\_\_ on his current account at my request, I the undersigned \_\_\_\_\_ of \_\_\_\_\_ hereby guarantee to you the repayment of all money which shall at any time be due from him to you on the *general balance* of his account with you, or on any account whatever, either alone or jointly with any other person or persons (such balance to include all interest, charges for commission and other expenses which you may in the course of your business as bankers charge in respect of any advances or discounts made to him or on his account, or for keeping his said account with you, or which may be otherwise chargeable to him); and also the due payment at maturity of any bill of exchange, promissory note or other negotiable instrument upon the security of or in respect of which any advance or credit shall be made or given to him alone or jointly as aforesaid by way of discount or otherwise. And I hereby declare that this guarantee shall be a *continuing guarantee* to the extent at any one time of Rs. \_\_\_\_\_ and shall not be considered as wholly or partially satisfied by the payment or liquidation at any one time or times hereafter of any sum or sums of money for the time being due upon any such general balance or other account as aforesaid, but shall extend and cover and be a security for every and all future sums or sum of money at any time due to you thereon, notwithstanding any such payment or liquidation, and shall be held to continue during the currency of any such bill of exchange, promissory note, or other negotiable instrument as aforesaid and shall not*

be determined by my death. And I further declare that you may grant to the said \_\_\_\_\_ or to any drawers, acceptors, or indorsers of bills of exchange or promissory notes received by you from time to time *any indulgence and compound with* him or them respectively without discharging or satisfying my liability and that all dividends, compositions and payments received from him or them respectively shall be taken and applied as payments in gross and that this guarantee shall apply to, and secure any ultimate balance that shall remain due to you and shall not affect or be affected by any other or future security taken or held by you or by any loss by you of any collateral or other security nor by your failing to recover by the realization of collateral securities or otherwise any sum or sums due from the said \_\_\_\_\_ or any laches on your part ; nor shall you be responsible to me for any such loss or laches. Moreover, I hereby declare that this guarantee shall not be affected by your being absorbed by or amalgamated with any bank.

Witness \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

— — —

## FORM No. 9.

*Loan Application Form.*

To

\_\_\_\_\_BANK LTD.,

\_\_\_\_\_Office.

Applicant's name (in full) \_\_\_\_\_

Names of Partners in case of a firm \_\_\_\_\_

Father's name and caste \_\_\_\_\_

Occupation with Income \_\_\_\_\_

Residence and present address \_\_\_\_\_

Amount required \_\_\_\_\_

Period and purpose for which required \_\_\_\_\_

How repayment is proposed \_\_\_\_\_

Whether he applied to any of the Branches, if so, with what result? \_\_\_\_\_

Any other particulars \_\_\_\_\_

*Nature, Extent and Particulars of Security Offered :—*

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

! \_\_\_\_\_

FORM No. 9—*Continued.**Rules relating to Security.*

1. If house or landed property is offered as security, the (a) nature, (b) locality, (c) previous encumbrances, (d) measurement, (e) value, (f) title and any other particulars necessary should be clearly given.

2. When stock-in-trade, goods, and commodities are offered (a) particulars, (b) condition, (c) net value, (d) market value, and (e) margin to be kept, should be mentioned.

3. When Government paper and debentures are offered (a) nature, (b) rate of interest, and (c) year, &c., should be given.

4. If jewellery, *i.e.*, gold is offered, its weight, value and margin should be given.

It should also be given if the cashier has tested it.

5. When shares of a company are offered, the (a) name of the company, (b) number of shares, (c) market value, (d) amount paid on each share should be mentioned and the last balance sheet shown if necessary.

6. In case of personal security, name, position and worth of the surety should be stated.

7. If a life policy is offered the (a) amount of policy, (b) name of the company, (c) premium, (d) surrender value, and (e) due date of the policy be given. Will the policy be assigned to the Bank?

*Statement of Moveable and Immoveable Property of the Applicant.*

Station.	Locality.	Particulars of property.	Approximate value.			REMARKS.

## FORM No. 9—Concluded.

*Statement of Previous Liabilities.*

Station.	Name of creditors and addresses.	On what security.	Amount.	REMARKS.

$\frac{I}{We}$  hereby declare that  $\frac{I}{we}$  have read the rules and that the answers given above are true and  $\frac{I}{we}$  hold  $\frac{myself}{ourselves}$  personally liable if any answer turns out to be wrong.

Signature\_\_\_\_\_

Place\_\_\_\_\_ Designation and Address\_\_\_\_\_

Date\_\_\_\_\_193 .

*Rules relating to Loan.*

1. The Bank grants loans of Rs. 100 and upwards on security of Government Paper, Jewellery and other good securities.
2. Promissory Notes bearing one or more endorsements, if approved, are discounted.
3. Advances sanctioned, but not taken up by the borrower within one month of sanction will be considered as cancelled.
4. A half-yearly incidental charge of Re. 1 is made upon each Loan and Pro-note Account.
5. Compound interest will be charged after every half-year.
6. The Bank has a right to adjust the whole or part of the amount due to the Bank from the funds to be paid to the constituent from whatsoever account.



## FORM No. 10.

*Memorandum for Securing Bankers' Advances against Stock-Exchange Securities.*

\_\_\_\_\_ of \_\_\_\_\_  
(hereinafter called the said Bankers) having agreed to make  
advances of moneys to \_\_\_\_\_ and to permit \_\_\_\_\_  
to open and continue an account with the said Bankers  
\_\_\_\_\_ of \_\_\_\_\_ and of \_\_\_\_\_  
do hereby deposit in their hands \_\_\_\_\_  
for better securing and re-payment of such advances or any renewal  
thereof, and as a general cover upon all accounts with the said Bankers  
including Bankers' Interest and their usual commission and other  
lawful charges, and \_\_\_\_\_ hereby authorise them to sell such  
securities by public auction or private contract, at such time or times,  
to such person or persons, and at such price or prices, and under such  
conditions as they in their absolute discretion shall think fit, and to  
apply the proceeds after payment of the costs attending such sale and  
transfer, in or towards satisfaction of the said advances and all other  
moneys which may at any time be owing by \_\_\_\_\_ to the  
Bankers, either separately or jointly with any other person or persons,  
and either as a principal debtor or as a surety for any other person or  
persons including such interest, commission and charges as aforesaid.

*Signature* \_\_\_\_\_

\_\_\_\_\_

## FORM No. 11.

*Notice of Lien on Shares to Company.*\_\_\_\_\_  
BANK LTD.,

Date \_\_\_\_\_

To

THE SECRETARY, \_\_\_\_\_

\_\_\_\_\_  
Co., Ltd.,  
\_\_\_\_\_

DEAR SIR,

We hereby beg to give you notice that we have a lien on the shares Nos. \_\_\_\_\_ in your Company standing in the name, of \_\_\_\_\_ of \_\_\_\_\_

Kindly sign and return to us the enclosed duplicate notice and at the same time be good enough to say whether you have received ~~notice~~ of any prior charges on the above shares.

Yours faithfully,

For \_\_\_\_\_ Bank Ltd.,

\_\_\_\_\_  
Manager.

*On the enclosed duplicate is endorsed the following certificate :—*

We hereby acknowledge having received a copy of the above notice and beg to state that we have not yet received any notice of a prior charge upon the shares.

Per pro \_\_\_\_\_ Co., Ltd.,

\_\_\_\_\_  
~~Secretary,~~

## FORM No. 12.

*Share Transfer Form.*

I \_\_\_\_\_ in consideration of the sum of Rupees \_\_\_\_\_ paid to me by \_\_\_\_\_ hereinafter called the said Transferee do hereby transfer to the said Transferee \_\_\_\_\_ Shares numbered \_\_\_\_\_ standing in my name in the books of the \_\_\_\_\_ Company Limited, to hold unto the said Transferee, \_\_\_\_\_ his executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution ; and I the said \_\_\_\_\_ do hereby agree to take the said Shares subject to the same conditions.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ 193 .

Signed by the abovenamed  
transferor in the presence of  
Witness \_\_\_\_\_

Seller \_\_\_\_\_

Signed by the abovenamed  
transferee in the presence of  
Witness \_\_\_\_\_

Purchaser \_\_\_\_\_  
Occupation \_\_\_\_\_  
Address \_\_\_\_\_

Purchaser's Specimen  
Signature \_\_\_\_\_

Approved

{ \_\_\_\_\_ } *Directors.*

## FORM No. 13.

*Dock Warrant.*

No. \_\_\_\_\_ Docks Co.

Date \_\_\_\_\_, 19 .

Warrant for \_\_\_\_\_ imported in the ship \_\_\_\_\_  
 Master \_\_\_\_\_ from \_\_\_\_\_ entered by \_\_\_\_\_  
 on the \_\_\_\_\_ deliverable to \_\_\_\_\_ or assigns by indorsement  
 hereon. Rent commences on the \_\_\_\_\_ and other charges from the date  
 hereof.

Rate Charged.

Mark.	Numbers.	Weight.	
		Gross.	Tare.

Ledger No. \_\_\_\_\_

Folio \_\_\_\_\_

\_\_\_\_\_ Clerk.

\_\_\_\_\_ Warrant Clerk.

\_\_\_\_\_

FORM No. 14.

*Warehouse-Keepers' Certificates.*

No. \_\_\_\_\_

Not transferable

Messrs.

We hold at your disposal in our warehouse as per conditions on back thereof, \_\_\_\_\_ ex. S. S. \_\_\_\_\_.

---

*Warehouse-Keepers.*

(Conditions regarding the issue of delivery orders, payment of rent, etc., are generally printed on the back of the form.)

---

## FORM No. 15.

*Memorandum of Deposit by a Customer of the Title Deeds  
to Secure his own Account.*

Memorandum that I, the undersigned of \_\_\_\_\_ hereby acknowledge that I have this day deposited with the \_\_\_\_\_ Bank Ltd. (hereinafter called "the Bank"; which expression shall include their successors and assigns), the documents specified in the Schedule hereto, with intent to create an equitable mortgage upon all my estate and interest in the property to which such documents relate, for the purpose of securing the payment to the Bank on demand of all moneys now owing or which shall at any time hereafter be owing from me either solely, or jointly with any person or persons, to the Bank whether on balance of account, or by discount, or otherwise in respect of bills of exchange, promissory notes, cheques, and other negotiable instruments, or in any manner whatsoever, and including interest with half-yearly rests, commission and other banking charges, and any law costs incurred in connection with the account. And I hereby further agree whenever requested by the Bank at my own cost to execute to the Bank a valid legal mortgage of such property in such form and with such power of sale and other provisions as the Bank may require for securing the re-payment on demand of all moneys secured by this equitable mortgage. And I hereby also agree that so long as any moneys remain owing from me to the Bank to pay interest thereon to the Bank after the rate of % per annum. And I hereby declare that the documents now deposited are all that are in my possession or control, and that the property is not charged or encumbered in any way whatsoever.

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 193 .

The schedule above referred to

*Witness*

*(Customer's Signature)*

\_\_\_\_\_

## FORM No. 16.

*Pledge of Goods to Secure a Demand Cash Credit.*

-BANK LTD.,

No.

Amount Rs.

Name(s)——

THE \_\_\_\_\_ BANK LIMITED (hereinafter called "the Bank") having at the request of \_\_\_\_\_ (hereinafter called "the Borrower(s)") opened or agreed to open in the Books of the Bank at \_\_\_\_\_ a Cash Credit Account to the extent of Rupees \_\_\_\_\_ with the Borrower(s) to remain in force until closed by the Bank and to be secured by goods to be pledged with the Bank, IT IS HEREBY AGREED between the Bank and the Borrower(s) (the Borrower(s)) agreeing jointly and severally) as follows :—

1st.—That the goods described in general terms in the Schedule hereto which have been already delivered to and the goods which shall be hereafter delivered to the Bank under this Agreement whether for the purpose of forming additional security for any sum already drawn or as security for any sum or sums to be drawn against the said Cash Credit Account, or by way of substitution for and in lieu of any goods which may from time to time have been delivered or may be delivered to the Bank under this Agreement or otherwise howsoever (hereinafter called "the Securities"), are hereby pledged to the Bank or are to be deemed to have been so pledged as security to the Bank for the payment by the Borrowers of the balance due to the Bank at any time or ultimately on the closing of the said Cash Credit Account and for the payment of all debts and liabilities mentioned in the 11th clause hereof. The expression "the balance due to the Bank" in this and the subsequent clauses of this Agreement shall be taken to include the principal moneys from time to time due on the said Cash Credit Account and also all interest thereon calculated from day to day at the rate hereinafter mentioned and the amount of all charges and expenses which the Bank may have paid or incurred in any way in connection with the Securities or the sale or disposal thereof.

2nd.—That the Borrower(s) shall not during the continuance of this Agreement pledge or otherwise charge or encumber any of the goods for the

time being the subject or intended to be the subject of this security nor do or permit any act whereby the security hereinbefore expressed to be given to the Bank shall be in anywise prejudicially affected.

3rd.—That the Borrower(s) shall with the previous consent of the Bank be at liberty from time to time to withdraw from the Bank any of the goods for the time being pledged to the Bank and forming part of the securities the subject of this Agreement, provided the advance value of the said goods is paid into the said account or goods of a similar nature to those mentioned in the schedule hereto, or any of the same, and of at least equal value, are substituted for the goods so withdrawn. Provided always that with the previous consent of the Bank the Borrower(s) shall be at liberty to withdraw from the Bank any of the goods for the time being pledged to the Bank without paying into the said Account such advance value as aforesaid or substituting any goods as aforesaid provided the necessary margin required by the 6th clause hereof is fully maintained.

4th.—That all securities already and hereafter delivered as aforesaid shall be insured against Fire risks by the Borrower(s) with some Insurance Company or Companies approved by the Bank in the name of the Bank for the full market value of such securities and that all policies for and receipts for premia paid on such Insurances shall be delivered to the Bank. Should the Borrower(s) fail to so insure or fail to deliver the policies or receipts for premia as aforesaid the Bank shall be at liberty to effect such insurances at the expense of the Borrower(s).

5th.—That all sums received under any such Insurances as aforesaid shall be applied in or towards the liquidation of the balance due to the Bank for the time being and in the event of there being a surplus the same shall be applied as provided by the 11th clause hereof.

6th.—That the Borrower(s) shall make and furnish to the Bank such statements and returns of the cost and market value of the securities and a full description thereof and produce such evidence in support thereof as the Bank may from time to time require and shall maintain in favour of the Bank a margin of                      per cent. between the market value from time to time of the securities and the balance due to the Bank for the time being. Such margin shall be calculated on the open market value of the securities as fixed by the Bank from time to time and shall be maintained by the Borrower(s) either by the delivery of further security to be approved by the Bank or by cash payment by the Borrower(s) immediately on the market value for the time being of the securities becoming less than the aggregate of the balance due to the Bank plus the amount of the margin as calculated above.

7th.—That interest at the rate of                      per cent. per annum shall be calculated and charged on the daily balance in the Bank's favour due



upon the said Cash Credit Account until the same is fully liquidated and shall be paid by the Borrower(s) as and when demanded by the Bank.

8th.—That on demand by the Bank the Borrower(s) shall pay to the Bank the Balance then due to the Bank on the said Cash Credit Account together with all further interest at the rate abovementioned and the amount of all further charges and expenses (if any) to the date of payment provided that nothing herein in this clause contained shall be deemed to prevent the Bank from demanding payment of the interest for the time being due at the abovementioned rate without at the same time demanding payment of the balance due to the Bank exclusive of such interest.

9th.—That if the Borrower(s) shall fail to maintain such margin as aforesaid or if the Borrower(s) fail or neglect to repay to the Bank on demand the balance then due to the Bank or in the event of the Borrower(s) becoming or being adjudicated Bankrupt or Insolvent or executing any Deed of Arrangement, Composition or Inspectorship or in the event of any distress or execution being levied or enforced upon or against any of the property of the Borrower(s) whether the said property shall or shall not be the subject of this security or (whether the Borrower(s) are or are not a Joint Stock Company) in the event of any person, firm or Company taking any steps towards applying for or obtaining an order for the appointment of a Receiver of the Borrowers' property or any part thereof or (in the event of the Borrower(s) being a Joint Stock Company) if any person, firm or Company shall apply for or obtain an order for the winding up of the Borrower(s) or if any such order is made or any step be taken by any person, firm or Company in or towards passing any resolution to wind up the Borrower(s), or if any such resolution be passed whichever may first happen it shall be lawful for the Bank forthwith or at any time thereafter and without any notice to the Borrower(s) (without prejudice to the Bank's right of suit against the Borrower(s) either by public auction or private contract absolutely to sell or otherwise dispose of all or any of the securities either together or in lots or separately and to apply the net proceeds of such sale in or towards the liquidation of the balance then due to the Bank.

10th.—That if the net sum realised by such sale be insufficient to cover the balance then due to the Bank, the Bank shall be at liberty to apply any other money or moneys in the hands of the Bank standing to the credit of or belonging to the Borrower(s) or any one or more of them in or towards payment of the balance for the time being due to the Bank; and in the event of there not being any such money or moneys as aforesaid in the hands of the Bank or in the event of such money or moneys being still insufficient for the discharge in full of such balance the Borrower(s) promise and agree forthwith on production

to them of an account to be prepared and signed as in the 12th clause hereinafter provided to pay any further balance which may appear to be due by the Borrower(s) thereon, PROVIDED ALWAYS that nothing herein contained shall be deemed to negative, qualify or otherwise prejudicially affect the right of the Bank (which it is hereby expressly agreed the Bank shall have) to recover from the Borrower(s) the balance for the time being remaining due from the Borrower(s) to the Bank upon the said Cash Credit Account notwithstanding that all or any of the said securities may not have been realised.

11th.—That in the event of there being a surplus available of the net proceeds of such sale after payment in full of the balance due to the Bank it shall be lawful for the Bank to retain and apply the said surplus together with any other money or moneys belonging to the Borrower(s) or any one or more of them for the time being in the hands of the Bank in or under whatever account as far as the same shall extend against in or towards payment or liquidation of any and all other moneys which shall be or may become due from the Borrower(s) or any one or more of them whether solely or jointly with any other person or persons, firm or Company to the Bank by way of Loans, Discounted Bills, Letters of Credit, Guarantees, Charges or of any other debt or liability including Bills, Notes, Credits and other obligations current though not then due or payable or other demands legal or equitable which the Bank may have against the Borrower(s) or any one or more of them or which the law of set-off or mutual credit would in any case admit and whether the Borrower(s) or any one or more of them shall become or be adjudicated Bankrupt or Insolvent or be in liquidation or otherwise and interest thereon from the date on which any and all advance or advances in respect thereof shall have been made at the rate or respective rates at which the same shall have been so advanced.

12th.—The Borrower(s) agree to accept as conclusive proof of the correctness of any sum claimed to be due from them to the Bank under this Agreement a statement of account made out from the books of the Bank and signed by the Accountant or other duly authorised officer of the Bank without the production of any other voucher, document or paper.

13th.—That this Agreement is to operate as security for the balance from time to time due to the Bank and also for the ultimate balance to become due on the said Cash Credit Account and the said account is not to be considered to be closed for the purpose of this security and the security is not to be considered exhausted by reason of the said Cash Credit Account being brought to credit at any time or from time to time or of its being drawn upon to the full extent of the said sum of Rs. \_\_\_\_\_ if afterwards re-opened by a payment to credit.

14th.—Provided always that this Agreement is not to prejudice the rights or remedies of the Bank against the Borrower(s) irrespective and independent

of this Agreement in respect of any other advances made or to be made by the Bank to the Borrower(s).

15th.—In case the Borrower(s) shall be a firm or members of a firm no change whatsoever in the constitution of such firm during the continuance of this Agreement shall impair or discharge the liability of the Borrower(s) or any one or more of them thereunder.

IN WITNESS whereof the Borrower(s) have hereunto set his (their) hands this \_\_\_\_\_ day of \_\_\_\_\_ in the year One Thousand Nine Hundred and \_\_\_\_\_

SCHEDULE OF SECURITIES referred to in the foregoing Instrument :—

FORM No. 16 (a).

*Agreement for advances on the security of pledge of grain and produce.*

To

\_\_\_\_\_BANK LTD.,

GENTLEMEN,

In consideration of the Bank granting  $\frac{\text{me}}{\text{us}}$  advances limited in amount and duration as in the discretion of the Bank from time to time on the security of grains or other produce,  $\frac{\text{I}}{\text{we}}$  \_\_\_\_\_ residing at \_\_\_\_\_ do hereby for  $\frac{\text{myself}}{\text{ourselves}}$  assigns, heirs, executors and administrators agree :—

1. That the advances so given shall be payable on demand with interest to date of payment,

2. That interest on the advances shall be payable at the rate of % per annum to be charged on the 30th September, and 31st March and if not paid on these dates may be added to the principal amount and shall bear interest at the rate aforesaid as from the due date and that all interest due will be paid up-to-date at the date the advance is finally cleared.

3. That if the advance is not paid on demand then the Bank may sell all or any part of the security pledged either by auction or private sale and under such condition as the Bank shall think fit after issuing to  $\frac{me}{us}$  15 days' notice by registered letter posted to above address ; the Bank, however, shall not be liable for any loss arising by reason of such sales.

4.  $\frac{I}{We}$  undertake to handover the grain or other produce to the Bank in the following manner :—

(a) The grain or other produce will be stored in the godowns or filled in the Khatties in the presence of an employee of the Bank.

(b) The godowns  $\frac{and}{or}$  Khatties will be handed over to the Bank with invoice containing full particulars of the grain or other produce including weight or other measurement and market value.

(c) The godown  $\frac{and}{or}$  Khatties so handed over will be in the full possession of the Bank who shall be entitled to keep their Durwans on the premises until such time as the advance including interest due is repaid and the godowns  $\frac{and}{or}$  Khatties are redelivered to  $\frac{me}{us}$  and  $\frac{I}{we}$  shall have no right to open them or in any way take delivery of the same or deliver to others the contents thereof.

(d) Notwithstanding the delivery to the Bank of the godowns  $\frac{and}{or}$  Khatties and the presence of the Bank's Durwans, the Bank shall in no way be responsible for the safe custody of the contents nor for the preservation of the said godowns, nor for the performance and observation of the terms on which the same are held and  $\frac{I}{we}$  hereby undertake to be responsible for their safety from theft and destruction or deterioration by rain, or other causes, it being understood that if so required the Bank on written application will allow  $\frac{me}{us}$  to open the godowns  $\frac{and}{or}$  Khatties for examination.

5.  $\frac{I}{We}$  hereby undertake that at no time will  $\frac{I}{we}$  allow the market value of the grain or produce pledged, less a clear margin of % to fall below amount due by  $\frac{me}{us}$  but should at any time the margin fall below this figure then the Bank may sell the security by auction or private sale after giving  $\frac{me}{us}$  15 days' notice by registered letter to the above address.

6. If  $\frac{I}{we}$  do not keep at all times the grain and produce insured to the full value thereof to the satisfaction of the Bank in some insurance office approved by it and hand over valid policies therefor assigned to the Bank, then the Bank may effect insurance thereof to the full value or any smaller at its own discretion and may treat all moneys so expended as money advanced to  $\frac{me}{us}$ .

7. The Bank may pay all moneys necessary to maintain their undisturbed possession of the said godowns  $\frac{and}{or}$  Khatties and to preserve the same in good condition and may treat all money so expended as money advanced to  $\frac{me}{us}$ .

8. The security held on the terms of this agreement shall act as a continuing security for the ultimate balance of all moneys that may be due from  $\frac{me}{us}$  to the Bank and neither the said security nor this agreement shall be considered terminated by reason only of the re-payment of any particular advance or by  $\frac{my}{our}$  account with the Bank being in credit at any time or from time to time (nor by any change in the constitution by death or otherwise in the partnership now carried on by us).

9. All grain or other produce which may hereafter be deposited as security with the Bank by way of addition to or substitution for the grain or other produce now deposited shall be included in and held subject to the terms of this agreement.

FORM No. 17.

*Trust Receipt.*

To \_\_\_\_\_ 193 .  
 \_\_\_\_\_ BANK LTD.,  
 \_\_\_\_\_

In consideration of the Bank handing to me Shipping Documents for goods, as per particulars at foot, hypothecated to the Bank as collateral security for the due payment of the undermentioned draft drawn upon their office in \_\_\_\_\_ by, \_\_\_\_\_ and accepted by their said Office,  $\frac{I}{we}$  hereby engage to land, store and hold the said goods as Trustee for and on behalf of the Bank, and the proceeds of the sales shall be received by  $\frac{me}{us}$  as Trustee for the Bank, and paid to the Bank as and when received,  $\frac{I}{we}$  at the same time specially advising the Bank of the account on which such payment is made, and  $\frac{I}{we}$  undertake to provide the Bank, by this or other means, with sufficient funds to meet the said draft together with all charges and commission, not less than three days before maturity.

$\frac{I}{We}$  also undertake to keep the goods fully insured against fire, and to handover to the Bank all amounts received from the insurers, the policies of Insurance being, in the meantime, held by  $\frac{me}{us}$  as Trustee for and on behalf of the Bank.

Without prejudice to anything herein contained  $\frac{I}{we}$  will, on the Bank's written demand to be made at any time forthwith, either return to the Bank the said Shipping Documents, Fire Insurance Policies, or any of them, or deliver up to the Bank the said goods or any part thereof.

*Particulars of Drafts and Goods.*

Amount of Bill.			Due.	Description of goods.	Marks and Nos.	Vessel.
Rs.	As.	Ps.				

*Signature.*  
 \_\_\_\_\_

## FORM No. 18.

*Assignment of the Life Policy to secure Assignor's own Liabilities.*

This Indenture made the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and \_\_\_\_\_ BETWEEN \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called the "Assignor" which expression shall include his executors, administrators and assigns where the context so requires or admits) of the one part and \_\_\_\_\_ Bank Limited (hereinafter called "the Bank" which expression shall include their successors and assigns where the context so requires or admits) of the other part WITNESSETH that for the purpose of effecting the security hereby given the Assignor doth hereby as beneficial owner assign unto the Bank ALL that Policy of Assurance granted to the Assignor on the life of the Assignor \_\_\_\_\_ by the \_\_\_\_\_ Insurance Company Limited, for the sum of \_\_\_\_\_ rupees and which policy bears date the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, and is numbered \_\_\_\_\_.

and all money assured or to become payable by or under the same policy and the full benefit thereof TO HOLD the same unto the Bank subject to the proviso for redemption hereinafter contained. PROVIDED ALWAYS that if the Assignor shall on demand pay to the Bank all and every sums and sum of money then due or owing to the Bank anywhere from or by the Assignor either solely or jointly with any other person or persons in partnership or otherwise and whether as principal or as surety upon banking account or upon any discount or other account or for any other matter or thing whatsoever including the usual banking charges the Bank shall at any time thereafter, upon the request and at the cost of the Assignor re-assign the said premises hereby assigned unto him or as he shall direct, AND the Assignor doth hereby covenant with the Bank that he will punctually pay the premiums and all other moneys which may become payable in respect of the said policy and observe all the conditions necessary for keeping the same in force and that he will from time to time lodge with the Bank the receipt for such premiums at least seven clear days before the expiration of the days of grace allowed for the payment of the said premiums. And it is hereby agreed that if the Assignor shall make default in lodging the receipt for any such premium within such time as aforesaid the Bank may if they shall think fit so to do pay such premium and debit the account of the Assignor with the amount thereof PROVIDED ALWAYS that it shall be lawful for the Bank at any time or times hereafter of their own absolute authority without the consent or concurrence of the Assignor to sell and surrender the said policy, moneys and premises to the said Assurance Society or absolutely to sell or otherwise dispose of the same to any other person or persons whomsoever by public auction or private contract or subject to such conditions or stipulations relating to the title or otherwise as shall appear expedient with full power to buy in or rescind or vary any

contract for sale and to re-sell without being answerable for any loss to arise thereby and for the purposes aforesaid or any of them to execute and do all such assurances and things as they shall think fit and to receive the moneys to arise from the surrender sale or other disposition of the said policy moneys and premises and out of the same moneys to pay or retain and satisfy all moneys due or owing on the security of these presents and all costs and expenses occasioned by the non-payment thereof, or incidental to the execution of his power. AND the Assignor doth hereby further covenant with the Bank that the said policy of Assurance is a valid and subsisting policy and not forfeited or otherwise become void or voidable. PROVIDED ALWAYS and it is hereby declared and agreed that this security shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition and without prejudice to any other security or securities which the Bank may now or hereafter hold from or on account of the Assignor. AND IT IS HEREBY FURTHER DECLARED AND AGREED that the Bank shall in event of their receiving notice that the Assignor has incumbered or disposed of his equity of redemption in the said policy, moneys and promised or any part thereof be entitled to close the then current account and to open a new account with the Assignor and that no money paid or carried to the credit of the Assignor in such new account shall be appropriated towards or have the effect of discharging any part of the amount due to the Bank on the said closed account at the time when they received such notice as aforesaid.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.\*

Signed, sealed, and delivered by the abovenamed

in the presence of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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\* Banker and Customer by S. E. Thomas, p. 604



## FORM No. 18 (a)

*Re-assignment of Life Policy.\**

This Indenture made the \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_ One thousand nine hundred \_\_\_\_\_ BETWEEN the within-named \_\_\_\_\_ Bank Limited (hereinafter called "the Bank") of the one part and the within named \_\_\_\_\_ (hereinafter called the "Mortgagor") of the other part WITNESSETH that the Bank as Mortgagees do hereby assign unto the Mortgagor THE within mentioned policy of Assurance TO HOLD the same unto the Mortgagor discharged from all principal moneys and the interest secured by the within written Indenture. In witness whereof the Bank have hereunto affixed their seal \_\_\_\_\_ day of year first above written.

\* Banker and Customer by S. E. Thomas, p. 606.

APPENDIX A.

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FORM No. 19.

*Notice of Assignment to the Insurance Co.*

-BANK LTD.,

-1937

THE MANAGER,

-INSURANCE CO. LTD.,

GENTLEMEN,

I hereby give you notice, that by an Indenture dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ of \_\_\_\_\_ whose life is assured by policy No. \_\_\_\_\_ in your society, did assign the said Policy to the \_\_\_\_\_ Bank Ltd.

Kindly acknowledge the receipt of this notice and inform me whether you have received notice of any previous charge on this Policy.

I enclose postage stamps for \_\_\_\_\_ in payment of the Registration Fee.

I am, Gentlemen,

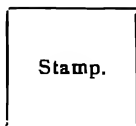
Yours faithfully,

*Manager.*

FORM No. 20.

*On Demand.*

DELHI, 3rd September, 1933.



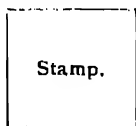
Rs. 100.

On demand, I promise to pay to K. J. Roy or order the sum of one hundred rupees for value received.

M. G. SINGH.

*Payable after date.*

MADRAS, 12th March, 1933.



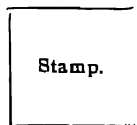
Rs. 200.

Two months after date I promise to pay to K. Sadagopachari or order the sum of two hundred rupees for value received.

B. GOVIND RAO.

*Payable with interest.*

CALCUTTA, 2nd May, 1932.



Rs. 300.

Three months after date I promise to pay the \_\_\_\_\_ Bank, Ltd. or order, at their Delhi Branch, the sum of rupees three hundred with interest thereon at 6% per annum until payment.

G. S. SODHI.

*First Bank of Redlands.**April 23, 1922.*

Mr. J. V. ROWAN,  
827, Darwin Ave.,  
Flint, Mich.

DEAR SIR,

"After a while"

So many people think they will begin to save "after a while." In the meantime they go on exercising the spending habit.

It is not the money that you SPEND now that will make you comfortable by and by. It is the money you SAVE now and during all the "nows" of your producing years.

Experience has shown that saving must be practised to be really successful. Once it is established as a habit, it becomes easy.

This bank will be glad to help you to save by suggesting various plans of saving—plans used successfully by many of our depositors.

Any officer of the Bank will be glad to talk with you if you will be kind enough to call.

Yours very truly,

*Manager*

\_\_\_\_\_Bank Ltd.

Dated\_\_\_\_\_

Dear Sir,

As desired in your letter of \_\_\_\_\_ we have sent you separately cheque book bearing Nos. K. 897301/325 and we shall be glad if you will acknowledge receipt of same in the form below to confirm safe receipt of the book by you.

Yours faithfully,

For \_\_\_\_\_Bank Ltd.

Notice :—Customers are requested to count the leaves of the cheque book before using same.

Dated\_\_\_\_\_

Messrs \_\_\_\_\_Bank Ltd.

Dear Sirs,

I am in receipt of your letter of \_\_\_\_\_ and am pleased to inform you that the cheque book sent separately has duly come to hand.

No. K. 897301/325

Yours faithfully,

# APPENDIX B.

## THE NEGOTIABLE INSTRUMENTS ACT 1881.

(Act XXVI of 1881).

(Passed on the 9th December, 1881.)

*Historical Memoir.*

Year.	No. of Act.	Name of Act.	How effected.
1840	VI	Bills of Exchange ...	Rep. Act XXVI of 1881.
1881	XXVI	Negotiable Instruments ...	Rep. in part, Act XII of 1891.  Rep. in part and amended, Act II of 1885, amended Act VI of 1897.  Am., Act IV of 1914; Act V of 1914.  Am., Act No. VIII of 1919.  " " " XXV " 1920.  " " " XII " 1921.  " " " XVIII " 1922.  " " " XXX " 1926.  " " " XXV " 1930.

An Act to define and amend the law relating to Promissory Notes Bills of Exchange, and Cheques.

Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques; it is hereby enacted as follows:—

*Preamble.*

# CHAPTER I.

## PRELIMINARY.

**Short title.** 1. This Act may be called the Negotiable Instruments Act, 1881.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1882, section 21,\* or affects any local usage relating to any instrument in an oriental language: provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the 1st day of March, 1882.

**Local extent.**  
**Saving of usages relating to Hundis, etc.**  
**Commencement.**

2. (Repeal of enactment). Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

**Interpretation clause.** 3. In this Act—  
"banker" includes also persons or a corporation or company acting as bankers; and  
"notary public" includes also any person appointed by the "Local Government"† to perform the functions of a notary public under this Act.

**"Banker"**  
**"Notary Public"**

\* See now B. 25 of the Indian Paper Currency Act, 1923 (10 of 1923).

† These words were substituted for the words "Governor-General in Council" by Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914.)

## CHAPTER II.

### OF NOTES, BILLS AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

#### *Illustrations.*

A signs instruments in the following terms:—

- (a) "I promise to pay *B* or order Rs. 500."
- (b) "I acknowledge myself to be indebted to *B* in Rs. 1,000, to be paid on demand, for value received."
- (c) "Mr. *B.*, I. O. U. Rs. 1,000."
- (d) "I promise to pay *B* Rs. 500 and all other sums which shall be due to him."
- (e) "I promise to pay *B* Rs. 500, first deducting thereout any money which he may owe me."
- (f) "I promise to pay *B* Rs. 500 seven days after my marriage with *C.*"
- (g) "I promise to pay *B* Rs. 500 on *D*'s death, provided *D* leaves me enough to pay that sum."
- (h) "I promise to pay *B* Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of



a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Drawer."  
"Drawee."

7. The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in any case of need, such person is called a "drawee in case of need."

"Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor."

"When a bill of exchange has been noted or protested for non-acceptance or for better security"\* and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

"Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Payee."

\* These words were substituted for the words "When acceptance is refused and the bill is protested for non-acceptance", by S. 2 of the Negotiable Instruments Act, 1885 (2 of 1885).

8. The "holder" of a promissory note, bill of exchange, or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if (payable to order).\*

before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in British India, shall be deemed to be an inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument.

13. "(1).† A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or bearer.

*Explanation (i).*—A promissory note, bill of exchange, or cheque is payable to order which is expressed to be so payable or which is expressed

\* These words were substituted for the words "if payable to or to the order of, a payee" by S. 2 of the Negotiable Instruments (Amendment) Act, 1919. (8 of 1919).

† The original S. 13 was numbered "(1)" and a sub-section to it numbered "(2)" was added by the Negotiable Instruments (Amendment) Act, No. V of 1914. The sub-section (1) of the same section was substituted by the sub-section (1) as given above by the Negotiable Instruments (Amendment) Act, No. VIII of 1919.

to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

*Explanation* (ii).—A promissory note, bill of exchange, or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

*Explanation* (iii).—Where a promissory note, bill of exchange or cheque, either originally or by indorsement is expressed to be payable to the order of a specific person, and not to him or his order, it is nevertheless payable to him or his order at his option "

(2)\* A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two or one or some of several payees.

14. When a promissory note, bill of exchange, or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument he is said to indorse the same, and is called the "indorser."

16. (1) If the indorser signs his name only, the indorsement is said to be in "bank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of a specified person, the indorsement is said to be "in full"; and the person so specified is called the "indorsee" of the instrument.

(2) † The provisions of this Act relating to payee shall apply with the necessary modifications to an indorsee.

17. Where an instrument may be construed either as a promissory note or bill of exchange the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

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\* This sub-section was added by S. 2 of the Negotiable Instruments (Amendment) Act, 1914 (5 of 1914).

† This sub-section was added by S. 3 of the Negotiable Instruments (Amendment) Act, 1914 (5 of 1914).

*Where amount is stated differently in figures and words.*

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

*Instruments payable on demand.*

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

*Indicate stamped instruments.*

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete

negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

*"Maturity."*

22. The maturity of a promissory note or a bill of exchange is the date at which it falls due.

*Days of grace.*

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

*Calculating maturity of bill or note payable so many months after date or sight*

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or where the instrument is a bill of exchange made payable a stated number of months after sight, and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

*Illustrations.*

- (a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.
- (b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the third December, 1878.
- (c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight, or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or protest for non-acceptance, or on which the event happens, shall be excluded.

*Calculating maturity of bill or note payable so many days after date or after sight.*

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

*When day of maturity is a public holiday.*

The expression "public-holiday" includes Sundays, New Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday: and any other day declared by the Local Government,\* by notification in the Official Gazette, to be a public holiday.

*Explanation.*

\* The powers of a Local Government under this Explanation have been delegated to the Commissioner in Sindh by the Government of Bombay under S. 2 of Act 5 of 1868, see Bombay Gazette, 1903, Part I, p. 449.

## CHAPTER III.

### PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a note, bill of exchange or cheque.

*Capacity to make etc., promissory notes, etc.*

*Minor.* A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

*Agency.*

A general authority to transact business, and to receive and discharge debts, does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange, or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

*Liability of agent signing.*

29. A legal representative of a deceased person, who signs his name to a promissory note, bill of exchange, or cheque, is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

*Liability of legal representative signing.*

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

*Liability of drawer.*

31. The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

*Liability of drawee of cheque.*

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of a note or acceptance respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

*Liability of maker of note and acceptor of bill.*

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

*Only drawee can be acceptor except in need or for honour.*

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or as acceptor for honour, can bind himself by an acceptance.

*Acceptance by several drawees not partners.*

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to or received by, such indorser as hereinafter provided.

*Liability of indorser.*

Every indorser after dishonour is liable as upon an instrument payable on demand.

*Liability of prior parties to holder in due course.*

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. The maker of a promissory note or cheque, the drawee of a bill of exchange until acceptance, and the acceptor, are in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer, or acceptor, as the case may be.

*Maker, drawee, and acceptor principals.*

*Prior party a principal in respect of each subsequent party.*

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

*Illustration.*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor, which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

*Discharge of Indorser's liability.*

*Illustration.*

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement " B".

Second indorsement, "Peter Williams".

Third indorsement, "Wright & Co."

Fourth indorsement, " John Rozario".

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

*Acceptor bound although indorsement forged.*

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

*Acceptor of bill drawn in fictitious name.*



43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But, if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

*Negotiable instrument made, &c. without consideration.*

**Exception 1.**—No party for whose accommodation a negotiable instrument has been made, drawn, or accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

**Exception 2.**—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque, consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

*Partial absence or failure of money consideration.*

**Explanation.**—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque stands in immediate relation with the payee and the indorser with the indorsee. Other signers may by agreement stand in immediate relation with a holder.

#### *Illustration.*

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

*Partial failure of consideration not consisting of money.*

45-A. [Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

*Holder's right to duplicate of lost bill.*

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]<sup>a</sup>

<sup>a</sup> S. 45-A was inserted by S. 3 of the Negotiable Instruments Act, 1885 (2 of 1885).

## CHAPTER IV.

### OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange, or cheque is completed by delivery, *Delivery.* actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a specified purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. *Negotiation by delivery.*

*Exception.*—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition), unless such event happens.

#### *Illustrations.*

(a) *A*, the holder of a negotiable instrument payable to bearer, delivers it to *B*'s agent to keep for *B*. The instrument has been negotiated.

(b) *A*, the holder of a negotiable instrument payable to bearer, which is in the hands of *A*'s banker, who is at the time the banker of *B*, directs the banker to transfer the instrument to *B*'s credit in the banker's account with *B*. The banker does so and accordingly now possesses the instrument as *B*'s agent. The instrument has been negotiated, and *B* has become the holder of it.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque (payable to order)\* is negotiable by the holder by indorsement and delivery thereof.

*Negotiation by indorsement.*

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

*Conversion of indorsement in blank into indorsement in full.*

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person

*Effect of indorsement.*

#### *Illustrations.*

*B* signs the following indorsements on different negotiable instruments payable to bearer:—

- (a) "Pay the contents to *C* only."
- (b) "Pay *C* for my use."
- (c) "Pay *C* or order for the account of *B*."
- (d) "The within must be credited to *C*."

These indorsements exclude the right of further negotiation by *C*.

- (e) "Pay *C*."
- (f) "Pay *C* value in account with the Oriental Bank."
- (g) "Pay the contents to *C*, being part of the consideration in a certain deed of assignment executed by *C* to the indorser and others."

These indorsements do not exclude the right of further negotiation by *C*.

51. Every sole maker, drawer, payee or indorsee, or all of several makers, drawers, payees or indorsees of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

*Who may negotiate.*

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\* These words were substituted for the words "payable to the order of a specified person or to a specified person or order" by S. 4 of the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919).

**Explanation.**—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

*Illustration.*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement exclude his own liability thereon or make such liability or the right of the indorser to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

*Indorser who excludes his own liability or makes it conditional.*

When an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

*Illustrations.*

(a) The indorser of a negotiable instrument signs his name adding the word—

"Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

*Holder deriving title from holder in due course.*

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

*Instruments indorsed in blank.*

*Conversion of indorsement in blank to indorsement in full.*

55. If a negotiable instrument, after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full or by one who derives title through such person.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

*Legal representative cannot, by delivery only, negotiate instrument, indorsed by deceased.*

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, or bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorser who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

*Accommodation note or bill.*

#### *Illustration.*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained

the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the *Instrument negotiable till payment or satisfaction.* maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

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## CHAPTER V.

### OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot after reasonable search, be found there, the bill is dishonoured.

(Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient).\*

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default

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\* This paragraph was added by S. 4 of the Negotiable Instruments Act, 1885.

† This word was substituted for the word "twenty-four" by S. 2 of the Negotiable Instruments (Amendment) Act, 1921 (14 of 1921).



of such presentment the other parties thereto are not liable thereon to such holder.

(When authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.)"

*Exception.*—Where a promissory note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

*Hours for presentment.*

65. Presentment for payment must be made during the usual hours of business, and, if at bankers, within banking hours.

*Presentment for payment of instrument payable after date or sight.*

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

*Presentment for payment of promissory notes payable by instalments.*

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

*Presentment for payment of instrument payable at specified place and not elsewhere.*

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place, and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

*Instrument payable at place specified.*

69. A promissory note, or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented at that place.

*Presentment where no exclusive place specified.*

70. A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence of the maker, drawee, or acceptor thereof, as the case may be.

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\* This paragraph was added by S. 4 of the Negotiable Instruments Act, 1885 (2 of 1885).

**71.** If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

*Presentment when maker etc., has no known place of business or residence.*

**72.** (Subject to the provisions of section 84),\* a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

*Presentment of cheque to charge drawer.*

**73.** A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

*Presentment of cheque to charge any other person.*

**74.** Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

*Presentment of instrument payable on demand.*

**75.** Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative or, where he has been declared an insolvent to his assignee.

*Presentment by or to agent representative of deceased or assignee of insolvent.*

**75-(A).†** Delay in presentment for acceptance or‡ payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

**76.** No presentment for payment is necessary and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

*When presentment unnecessary.*

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

\* These words and figures were inserted by S. 2 of the Negotiable Instruments (Amendment) Act, 1897 (6 of 1897).

† Inserted by the Negotiable Instruments (Amendment) Act, No. XXV of 1925.

‡ The words "acceptance or payment" were added by S. 3 of the Negotiable Instruments (Amendment) Act No. XII of 1921.

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part-payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange accepted payable at a specified bank, has

*Liability of banker for negligently dealing with bill presented for payment.*

been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

## CHAPTER VI.

### OF PAYMENT AND INTEREST.

78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque, must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

*To whom payment should be made*

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount or until such date after the institution of a suit to recover such amount as the Court directs.

*Interest when rate specified.*

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall (notwithstanding any agreement relating to interest between any parties to the instrument,) \* be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

*Interest when no rate is specified*

*Explanation.*—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is, on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

*Delivery of instrument on payment or indemnity in case of loss.*

\* These words were substituted for the words "except in cases provided for by the Code of Civil Procedure, S. 532" by S. 2 of the Negotiable Instruments (Interest) Act, 1925 (30 of 1926).

## CHAPTER VII.

### OF DISCHARGE FROM LIABILITY OF NOTES, BILLS AND CHEQUES.

*Discharge from liability.* 82. The maker, acceptor, or indorser respectively of a negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;  
*by cancellation;*

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;  
*by release;*

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor, or indorser makes payment in due course of the amount due thereon.  
*by payment.*

83. If the holder of a bill of exchange allows the drawee more than forty-eight\* hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.  
*Discharge by allowing drawee more than 48 hours to accept.*

84. †(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.  
*When cheque not duly presented and drawer damaged thereby.*

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

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\* This word was substituted for the words "twenty-four" by S. 2 of the Negotiable Instruments (Amendment) Act, 1921 (12 of 1921).

† This section was substituted by S. 3 of the Negotiable Instruments (Amendment) Act, 1897 (6 of 1897).

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

*Illustrations.*

- (a) A draws a cheque for Rs. 1,000 and when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.
- (b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

With a view to provide that cheques originally drawn to bearer shall not lose their bearer character notwithstanding any endorsement thereon whether in full or blank and whether such endorsement purports to restrict or exclude further negotiation or not, a bill adding the following sub-section was passed by the Council of State in the winter session of 1933 and will come up before the Legislative Assembly in September 1933.

" Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon and notwithstanding that any such endorsement purports to restrict or exclude further negotiation "

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee the drawee is discharged by payment in due course.

*Cheque payable to order.*

85A. Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

*Drafts drawn by one branch of a bank on another payable to order.*

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time of payment, or which where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

*Parties not consenting discharged by qualified or limited acceptances.*

*Explanation.*—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;

(b) where it undertakes the payment of part only of the sum ordered to be paid ;

(c) where no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere ;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Any material alteration of a negotiable instrument renders the same

*Effect of material alteration.*

void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ; and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

*Alteration by indorsee.*

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

*Acceptor or indorser bound notwithstanding previous alteration.*

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

*Payment of instrument on which alteration is not apparent.*

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon ; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed

*Extinguishment of rights of action on bill in acceptor's hands*

90. If a bill of exchange which has been negotiated is at or after maturity, held by the acceptor in his own rights, all rights of action thereon are extinguished.

## CHAPTER VIII.

### OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners makes a default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

*Dishonour by non-acceptance.*

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

*Dishonour by non-acceptance.*

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non payment, the holder thereof, or some party thereto who remains liable thereon must give notice that the instrument had been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

*By and to whom notice should be given.*

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note of the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given or where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

*Mode in which notice may be given.*

If the notice is duly directed and sent by post and miscarries such miscarriage does not render the notice invalid.



95. Any party receiving notice of dishonour must, in order to render *Party receiving any prior party liable to himself, give notice of must transmit dishonour, to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.*

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

*When party to whom notice given is dead.* 97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

*When notice of dishonour is unnecessary.* 98. No notice of dishonour is necessary—  
(a) when it is dispensed with by the party entitled thereto ;

- (b) in order to charge the drawer when he has countermanded payment ;
  - (c) when the party charged could not suffer damage for want of notice ;
  - (d) when the party entitled to notice cannot after due search be found ; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;
  - (e) to charge the drawers when the acceptor is also a drawer ;
  - (f) in the case of a promissory note which is not negotiable ;
  - (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.
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## CHAPTER IX.

### OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may  
*Noting.* cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each,

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if any assigned for such dishonour, or, if the instrument has not been expressly dishonoured the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may,  
*Protest.* within a reasonable time, cause, such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.  
*Protest for better security.*

*Contents of protest.* 101. A protest under section 100 must contain—

- (a) either the instrument itself or a literal transcript of the instrument and everything written or printed thereupon ;
- (b) the name of the person for whom and against whom the instrument has been protested ;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found ;
- (d) when the note or bill has been dishonoured the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;

(e) the subscription of the notary public making the protest ;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

[\* A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk, or where authorised by agreement or usage, by registered letter.]

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may without further presentment to the drawee, be protested for non-payment in the place specified for payment unless paid before or at maturity.

*Protest of foreign bills.*

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

104-A. \* [For the purpose of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting].

*When nothing equivalent to protest.*

\* These paragraphs were added by Ss. 5 and 6 of the Negotiable Instruments Act, 1885 (2 of 1885).

## CHAPTER X.

### OF REASONABLE TIME.

105. In determining what is reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

*Reasonable time of giving notice of dishonour.* 106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

*Reasonable time for transmitting such notice.* 107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

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## CHAPTER XI.

### OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder by writing on the bill, accept the same for the honour of any party thereto.\*

*Acceptance for honour.*

109. A person desiring to accept for honour, must † [by writing on the bill under his hand,] declare that he accepts under protest the protested bill for the honour of the drawer, or of a particular indorser whom he names, or generally for honour.‡

*How acceptance for honour must be made.*

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

*Acceptance not specifying for whose honour it is made.*

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

*Liability of acceptor for honour.*

But an acceptor for honour is not liable to the holder of the bill unless it is presented or (in case the address given by such acceptor of the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

*When acceptor for honour may be charged.*

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or presented for such dishonour.

\* Portion repealed by S. 7 of the Negotiable Instruments Act, 1885 (2 of 1885) has been omitted.

† These words were substituted for the words "in the presence of a notary public subscribe the bill with his own hand and " by S. 8 of the Negotiable Instruments Act, 1885 (2 of 1885).

‡ Portion repealed by S. 8 of the Negotiable Instruments Act, 1885 (2 of 1885) has been omitted.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying or \* [his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

*Payment for honour.*

114. Any person so paying is entitled to all rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays, all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

*Drawee in case of need.*

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

*Acceptance and payment without protest.*

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

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\* These words were inserted by S. 9 of the Negotiable Instruments Act 1885 (2 of 1885).

## CHAPTER XII.

### OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee shall \* be determined by the following rules :—

*Rules as to compensation.*

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;
- (c) an indorser who being liable, has paid the amount due on the same, is entitled to the amount so paid with interest at six per cent per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment ;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

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\* The words and brackets " (except in cases provided for by the Code of Civil Procedure, S. 532.)" have been omitted by S. 3 of the Negotiable Instruments (Interest) Act of 1926 (30 of 1926).

## CHAPTER XIII.

### SPECIAL RULES OF EVIDENCE.

*Presumptions as to negotiable instruments.*

118. Until the contrary is proved, the following presumptions shall be made:—

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

*as to date.*  
on such date;

(b) that every negotiable instrument bearing a date was made or drawn

(a) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

*as to time of transfer.*  
maturity;

(d) that every transfer of a negotiable instrument was made before its

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

*as to stamp.*

(f) that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that the holder of a negotiable instrument is a holder in due course: Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.



120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

*Estoppel against original validity of instrument.*

121. No maker of a promissory note and no acceptor of a bill of exchange (payable to order)\* shall in a suit thereon by a holder in due course, be permitted to deny the payee's capacity at the date of the note or bill, to indorse the same.

*Estoppel against denying capacity of the payee to indorse.*

122. No indorser of a negotiable instrument shall in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

*Estoppel against denying signature or capacity of prior party.*

\* These words were substituted for the words "payable to, or to the order of, a specified person" by S. 5 of the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919),

## CHAPTER XIV.

### OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

*Cheques crossed generally.*

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially and to be crossed to that banker.

*Cheques crossed specially.*

125. Where a cheque in uncrossed, the holder may cross it generally or specially.

*Crossing after issue.*

Where a cheque is crossed generally the holder may cross it specially.

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

*Payment of cheques crossed generally.*

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

*Payment of cheques crossed specially.*

*agent for collection.*

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his

*Payment of cheques crossed specially more than once.*

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be

*Payment in due course of crossed cheques.*

placed in the same position in all respects, as they would respectively be entitled to, and placed in, if the amount of the cheque had been paid to and received by the true owner, thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

*Payment of crossed cheques out of due course.*

130. A person taking a cheque crossed generally or specially bearing in either case the words "not negotiable" shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

*Cheque bearing "not negotiable."*

131. A banker who has, in good faith and without negligence, received payment for a customer of a cheque crossed generally or specially to himself, shall not, in case the title of the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

*Non-liability of banker receiving payment of cheque.*

\* *Explanation* :—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

\* This was added by S. 2 of the Negotiable Instruments (Amendment) Act, 1921 (18 of 1922).

## CHAPTER XV.

### OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

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## CHAPTER XVI.

### OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange, or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by law of the place where the instrument is made payable.

*Law governing liability of maker, acceptor or indorser of foreign instruments.*

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

*Law of place of payment governs dishonour.*

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstances that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made therein in British India.

*Instrument made, etc., out of British India, but in accordance with its law.*

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

*Presumption as to foreign law.*

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## CHAPTER XVII.\*

### NOTARIES PUBLIC.

138. The Local Government † may, from time to time by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

*Power to appoint notaries public.*

139. The Governor-General in Council may, from time to time by notification in the official Gazette, make rules consistent with this Act for the guidance of and control of notaries public appointed under this Act, and may, by such rules, (among other matters), fix the fees payable to such notaries.

*Powers to make rules for notaries public.*

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\* Chapter XVII was inserted by S. 10 of the Negotiable Instruments Act, 1885 (2 of 1885).

† These words were substituted for the words " Governor General in Council" by Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914).

# APPENDIX C 1

The following are the principal books of accounts used in a bank :—

## *I. CASH SECTION.*

1. Counter Cash Book or Received Cash Book, or Receiving Book.
2. Received Day Book or Waste Book.
3. Sectional Cash Book.
4. Paid Cash Book.
5. Coin Balance Book.
6. Paid Waste Book.
7. In Clearing Book.
8. Country Clearing Books (" Out " and " In ").
9. Goldsmith's Book.
10. Clearing Balance Book.
11. Cash Balance Book.

## *II. BILL SECTION.*

12. Short Bills Book.
13. Bill Journals or Diaries.
14. Bills Discounted Book.
15. Discount Ledger and Acceptance Ledger.
16. Acceptance Book.

## *III. SECURITIES AND INVESTMENT SECTION.*

17. Securities Register: (a) General ; (b) Customers' Loans ; (c) Stock-broker' or other Short Loans ; (d) Standing Orders Book.

## *IV. CUSTOMER'S SECTION.*

18. Current Accounts.
19. Deposit Accounts.
20. Loan Accounts.
21. Loans Cash Book.

## *V. PROFIT AND LOSS SECTION.*

22. Current Accounts Analysis Book, (debit and credit), or Short.
23. Rentals Ledger,
24. Securities sold for customers.
25. Securities purchased for customers,
26. Salaries Book.

## *VI. BRANCHES SECTION.*

27. Debit Journal.
28. Credit Journal.
29. Cheques remitted.
30. Cheques Received,

# APPENDIX C<sub>2</sub>

## PART I.

### *Government Securities.*

No.	Loan.	Interest Payable.	Amount Outstanding on 31st October 1931.	
1	3% loan of 1895-97	... 30th June and 31st December	Rs. 5,42,71,800	Re
2	3½% loan of 1842-43	... 1st February and 1st August	22,73,57,000.	
3	3½% loan of 1854-55	... 30th June and 31st December	23,36,00,753.	
4	3½% loan of 1865	... 1st May and 1st November	36,53,38,950.	
5	3½% loan of 1879	... 16th January and 16th July	2,60,94,400.	
6	3½% loan of 1900-01	... 30th June and 31st December	31,58,50,900.	
7	4% conversion loan of 1916-17	... 1st April and 1st October	9,90,01,200.	Aff 1
8	5% War loan of 1929-47§	15th February and 15th August	19,67,94,250.	Re an
9	5% loan of 1945-55*§	... 15th April and 15th October	56,79,01,700.	No
10	6% Bonds 1932*	... 1st April and 1st October	14,61,39,800.	On
11	5% Bonds 1933*	... 1st March and 1st September	21,45,58,200.	On
12	5% Bonds 1935	... 15th March and 15th September	12,83,14,900.	On
13	4% loan 1960-70	... do, do.	22,49,70,600.	No
14	4% loan 1934-37	... 1st February and 1st August	19,53,79,100.	No
15	4½% loan 1955-60	... 15th March and 15th September	9,05,69,700.	No
16	4½% bonds 1934	... 15th March and 15th September	25,98,05,600.	On
17	5% loan 1939-44§	... 15th January and 15th July	28,22,85,800.	No
18	6% bonds 1933-36	... 15th February and 15th August	20,70,40,000	No



Amount standing on 31st October 1931.	Repayable.
Rs. 71,000	Repayable at the option of the Government after three months' notice.
57,000.	do.
100,753.	do.
38,950.	do.
4,400.	do.
50,900.	do.
101,200.	After 1st October 1931 and not later than 1st October 1936, with 3 months' notice.
94,050.	Repayable not before 15th August 1929 and not later than 15 August 1947, with 3 months' notice.
101,700.	Not before 15th October 1945 and not later than 15th October 1955, after 3 months' notice.
39,800.	On 1st October 1932.
58,200.	On 1st September 1933.
14,900.	On 15th September 1935.
70,600.	Not before 15th September 1960 and not later than 15th September 1970, after 3 months' notice.
79,100.	Not before 1st August 1934 and not later than 1st August 1937, after 3 months' notice.
59,700.	Not before 15th September 1955 and not later than 15th September 1960, after 3 months' notice.
105,600.	On 15th September 1934.
135,800.	Not before 15th July 1939 and not later than 15th July 1944, after 3 months' notice.

## PART II.

*Closing prices of Indian Rupee Securities on the\**  
*3rd March, 1933 were as under :—*

Name.	Price.	Approximate Yield.	
		Including Redemption.	Excluding Redemption.
Government Securities			
Taxable Loans.			
3 % (1896-97) ...	70 $\frac{1}{8}$	...	4'23
3 $\frac{1}{2}$ % Govt. Paper ...	82 $\frac{3}{4}$	...	4'23
4 % Convn. Loan (1931-36)..	101 $\frac{1}{8}$	3'65	3'95
4 % Loan (1934-37) ...	101 $\frac{1}{2}$	3'63	3'94
4 % New Loan (1943) ...	100 $\frac{7}{8}$	3'82	3'94
4 % Loan (1960-70) ...	94 $\frac{3}{8}$	4'31	4'24
4 $\frac{1}{2}$ % Bonds (1934) ...	101 $\frac{7}{8}$	3'21	4'42
4 $\frac{1}{2}$ % Loan (1955-60) ...	103	4'29	4'37
5 % Loan (1929-47) ...	100 $\frac{5}{8}$	...	4'97
5 % Bonds (1935) ...	103 $\frac{7}{8}$	3'37	4'81
5 % Loan (1939-44)* ...	105	4'10	4'76
5 % Loan (1940-43)* ...	105 $\frac{3}{8}$	4'15	4'74
5 $\frac{1}{4}$ % Loan (1938-40)* ...	106 $\frac{3}{4}$	4'11	4'15
6 % Loan (1933-36)* ...	101 $\frac{9}{16}$	...	5'91
6 $\frac{1}{2}$ % Treasury Bonds (1935).	106 $\frac{1}{2}$	3'75	6'10
5 % U. P. Bonds (1944) ...	105 $\frac{1}{2}$	4'38	4'74
Tax Free Loans.			
5 % Loan (1945-55)* ...	111 $\frac{1}{8}$	3'86	4'50
5 % Bonds (1933) ...	101 $\frac{1}{8}$	...	4'92

\* Yield calculated at the shortest date for Redemption.

## APPENDIX D.\*

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### ANALYSIS OF DEPOSITORS' ACCOUNTS.

The analysis of a depositor's account is the process of determining the profit or loss on the account and is governed by the usual principles of cost accounting. In the application of those principles it is found that four general factors are to be considered:

1. The amount of the depositor's balance that can be loaned or invested.
2. The amount of income that such a balance when loaned produces at the average net rate on loans and investments.
3. The amounts of all disbursement and other revenue directly traceable to the account, and
4. The amount of the bank's general expense which should be equitably apportioned to the account.

**DETERMINING GROSS PROFIT OR LOSS:** A certain amount of preparatory work is necessary in order to apply 1, 2 and 3. This work will include: finding the net yield on money loaned, the time necessary to collect items, average reserve maintained, etc., etc.

By the use of these figures in connection with those of a given account, it will be possible to determine the gross profit or loss in a very few minutes, a result that in many cases will be considered a sufficiently reliable gauge of the value of the account.

**DETERMINING NET PROFIT OR LOSS:** If it is desired to ascertain the net profit or loss, a portion of the general expenses must be included. This, also, will require some preparatory work (the method is briefly described in pages 383 and 384), which, however, ordinarily need be done only once during the year.

A greater part of the effort to offer a workable plan has been devoted to the disposition of item 4. As any apportionment as exact as theory demands might prove too expensive for a smaller bank to operate, the method is considerably abridged and averages have been adopted throughout.

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\* This is an exact reproduction of the short method of the "Analysis of Depositors' Accounts," published by the Federal Reserve Bank of New York.

The figures employed are hypothetical, intended only to illustrate the method and, therefore, should not be used for comparison with actual results.

THE METHOD OF ANALYSIS ADOPTED herein is divided into two parts; first, example forms A and B, analyzing and assembling the information concerning an account, followed by notes of explanation to be found on pages 382 and 383; and second, tables 1 and 2 with accompanying rules indicating the distribution of overhead or general expenses.

## ANALYSIS OF ACCOUNT

JOHN DOE  
Name of Depositor.

September, 1915.  
Period of Analysis.

Date.	DAILY BALANCES.		AMOUNTS IN TRANSIT.				EXCHANGE.	
	Dr.	Cr.	1 day.	2 days.	4 days.	8 days.	Paid.	Received.
1		\$ 1,900			\$ 500		\$.25	\$.50
2		2,000	\$ 1,200					
3		8,010	1,800		500			
4		8,765		\$ 1,900		\$ 100		
5		8,765						
6		1,800	500			50		
7	\$ 300				80			
8		1,000			270			
9		4,900	1,000					
10		2,200				500		
11		8,000		2,000	400			
12		8,000						
13		4,500	1,500		150			
14	200					270		.30
15		2,700			510			
16		8,500	2,000					
17		8,900	1,000		70			
18		4,200		3,000		180	2.50	3.50
19		4,200						
20		2,100			200			
21		5,700	1,500			400		
22		4,500			800			
23	500							
24		4,860	1,000		120			
25		2,800		1,000	200			
26		2,800						
27		2,800						
28		1,500						
29		2,400						
30		2,200						
31								
Totals	\$ 1,000*	\$ 88,500	\$ 11,500	\$ 7,900	\$ 8,800	\$ 1,500	\$ 2.75 (d)	\$ 4.80 (e)

(a) One day's interest on overdraft say 17c. (b) Average \$ 2,750 per day in a 30-day month. \$ 11,500 for 1 day 11,500 7,900 for 2 days 15,800 8,800 for 4 days 18,200 1,500 for 8 days 12,000

Supposedly unavoidable debits used for illustration in analysis.

(Divide by 80) \$ 52,500  
(c) Average per day \$ 1,750

## SUMMARY OF ANALYSIS.

Form B.

JOHN DOE Name of Depositor.	September, 1915. Period of Analysis.
<b>INCOME EARNING BALANCE.</b>	
1. Average daily balance (b)—Form A	\$ 2,750
2. <i>Less</i> —Average in transit (c)—Form A	1,750
3. Net Cash daily balance ...	\$ 1,000
4. <i>Less</i> —Reserve,	
In Vault ... (4%)	\$ 40
With Federal Reserve Bank. (8%)	80
With reserve agents ... (0%)	0   120
INCOME EARNING REMAINDER ... (88%)	

GROSS PROFIT OR LOSS.				Expense	Income.
Income earning remainder employed as follows :					
With reserve agents ... ( 0 %) at 0 %					
5.	With other banks ... ( 3 %) at 2 %				.05
6.	Loaned and invested... (85 %) at 4.763%				8.87
7.	EXCHANGE :				
	Received on items ( a )—Form A			...	4.80
	Paid for collection ( d )—Form A			2.75	
8.	INTEREST :				
	Received on overdrafts				
	( a )—Form A			...	...
	Paid on average balance			...	...
	( b )—Form A			4.52	
	MISCELLANEOUS :			...	...
				7.27	7.89
	GROSS PROFIT ✓			.62	
	LOSS			...	...
				7.89	7.89
NET PROFIT OR LOSS.					
	Gross profit or loss brought down			...	...
	OVERHEAD COST :				.62
9.	Charge for ACTIVITY ... 163 items at .0233 each			3.80	
10.	Charge for SIZE—cash balance ... \$ 1,000 at 2.05 per annum			.17	
11.	Charge for NUMBER ... at 4.08 per annum			.94	
				4.81	.62
	NET PROFIT				
	LOSS ✓			...	...
				4.91	8.69
					4.91

NOTE : Numerals in heavy-faced type refer to explanations on pages 518 and 519.

**NOTES EXPLAINING HOW FORMS A AND B ARE  
USED IN PRACTICE.**

The first point to be ascertained is what portion of the account is available to the Bank for loaning purposes. This entails the deduction of the items in transit and the Reserve percentage from the Balance carried on the account. The analysis provides for a period of one month and arrives at the balance available for loaning purposes as follows :

**INCOME EARNING BALANCE.**

- (1) **Average daily balance for month :** This is taken from the figures which represent ledger balances shown on Form A.
- (2) **Amount in Transit :** All items received for deposit are listed daily according to the number of days required to collect them and at the end of the month the totals are multiplied by the respective number of days, and the resulting total figure divided by the number of days in the month. This will give the average Amount in Transit daily.
- (3) **Net Average Daily Balance :** The difference between the two above amounts will be Net Average daily balance. This is the true or cash balance.
- (4) **Reserve :** The portions of the Net Balance carried as Reserve (on which no interest is received) are next ascertained and set out as a deduction.

**GROSS PROFIT OR LOSS.**

- (5) **Excess Reserve :** The percentage of total deposits (sometimes known as Secondary Reserve), carried with correspondents for various reasons, is then taken into consideration. The same percentage of the Net Balance of the Depositor's account is also taken, and deducted from the Net Daily Balance of the account. Any interest received on such Excess Reserve is taken into account in the Income column on the Summary.

The remainder of the Net Balance is the balance available to the Bank for loaning purposes, on which is figured (for one month) interest at the average net rate received on loans for the current period, and the result extended into the "income" column.

- (6) **Interest on balance available for loaning purposes :** In this example the total interest on \$ 1,220,000, loaned or invested, by the bank is

assumed to be \$73,200. Deducting the expenses against this, estimated at \$15,086 (see Table I, page 521), a net average earning rate of 4.763% per annum on loans is reached.

- (7) **Exchange** : Exchange received from customers, and exchange paid on items received from them, are listed daily in the columns provided for that purpose on Form A, and the totals of these columns carried into the Summary (Form B).
- (8) **Interest** : The actual amount of interest paid to the customers or the actual amount collected from customers on overdraft balances is next brought into the Summary.

The above items of Income and Expense together with any miscellaneous revenue or expense in connection with the particular account, such as special check book furnished or sold to the customer, saleable exchange received from him or furnished to him at a profit or loss, will give the gross profit or loss of the account.

#### NET PROFIT OR LOSS.

To determine the net profit or loss the general expenses of the bank have still to be considered and the proportion thereof applicable to customers' accounts ascertained and spread over the various accounts.

I. To find this proportion, the expenses of the bank are first divided among the different kinds of business done by the bank. (See example, Table I.)

The principal divisions in a country bank are :

**Depositors' Checking Accounts** : These are charged with all expenses incidental to obtaining and handling depositors' accounts, and looking after the banks' reserves. The expenses incidental to the investing of the depositors' money come under the next head, that of :—

**Capital, Surplus, Undivided Profits and Loans** : These are charged with all expenses incidental to making loans and investments and the carrying on of the general business of the bank not covered by special divisions.

**Savings and Certificates** : These are charged with all expenses incidental to obtaining and looking after these accounts. The expense of investing the funds is borne by Capital and Surplus division.

**Other Divisions** : These include currency, foreign exchange, brokerage, credit department, trust department, etc. In the example given, details have not been carried out but the expenses simply grouped together under "Other Divisions."



In Table I, page 521, the distribution of expenses among these divisions is given with explanations following.

II. The expenses applicable to depositors' accounts having thus been obtained, they have still to be apportioned among the individual depositors.

They must be divided according to :

1. Activity of Accounts.
2. Size of Accounts.
3. Number of Accounts.

This further sub-division is shown in Table II.

The result of the method of ascertaining the profit or loss on an individual account can now be arrived at.

Tables I and II have shown how to arrive at expenses applicable to depositors' accounts and also how to sub-divide this total according to activity, size and number of accounts. In the example given the figures are as follows :

1. Activity	...	...	...	\$ 8,891.00
2. Size	...	...	...	2,053.00
3. Number	...	...	...	4,752.00
Total Expense of Depositors' Accounts				... \$ 15,696.00

These expenses are now apportioned to the individual depositors as follows :

- (9) **Activity** : This expense is distributed to the individual accounts according to the number of items handled in each account whether debits or credits. In the example given the total number of items handled by the bank in the year was 980,988. The entire activity expense of the bank was \$ 8,891.00 making the cost \$.0233 per item. There were 168 items in this particular depositors' account, making the proportionate charge for activity expense against this account \$ 3.80 for the month.

NOTE : A more accurate method would sub-divide the items into classes, such as : Home, Town, Country, Clearing House, etc , and obtain the cost of each. For obvious reasons such detail is omitted in an abridged method.

- (10) **Size** : This expense is apportioned to the accounts according to the amount of balance carried. Assuming in this example that the deposits of the bank are one million dollars and the " Size " distribution \$ 2,053, it will be seen that the apportionment will be at the rate of \$ 2.05 per \$ 1,000 per year, or \$.17 for one month.

(11) **Number** : This expense is divided equally over the number of accounts irrespective of activity or size. In the example given there are 1165 depositors. The total expenses are \$4,752.00, making a charge of \$4.08 per annum or 34 cents per month against each depositor.

These figures complete the analysis which shows that the bank is sustaining a loss at the rate of \$3.69 a month or \$44.28 a year on this depositor's account.

The analysis brings out the following facts :

1. That uncollected items are being credited as cash, making the apparent balance of the account more than twice the real balance.
2. That interest is being paid on such uncollected items
3. That the bank is incurring considerable expense due to the activity of the account and a lesser amount due to its size and its relation to the total number of accounts.

TABLE I.

*Distribution of Expense According to Divisions of Business.*

Expense Accounts.	Depositors Checking Accounts.	Capital, Surplus and Undivided Profits and Loans.	Savings and Cer- tificates.	Other Divi- sions of Busi- ness.	Totals.
Officers' Salaries ...	\$3,300	\$6,600	\$550	\$550	\$11,000
Employees' Salaries ...	5,200	650	325	325	6,500
Rent ...	4,250	1,250	1,000	1,000	7,500
Taxes ...	...	5,000	...	...	5,000
Stationery and Printing, etc. ...	1,000	250	125	125	1,500
Other Supplies ...	333	83	42	42	500
Telephone and Tele- graph ...	333	83	42	42	500
Postage ...	417	104	52	52	625
Light and Heat ...	170	50	40	40	300
Insurance ...	50	300	25	25	400
Surety Bonds ...	75	50	25	25	175
Depreciation (or maintenance) ...	568	156	133	133	1,000
Bad Debts and Special loss ...	...	500	...	...	500
Miscellaneous ...	...	...	...	...	...
<b>TOTALS ...</b>	<b>\$15,696</b>	<b>\$15,086</b>	<b>\$2,359</b>	<b>\$2,359</b>	<b>\$35,500</b>

RULES FOR DISTRIBUTION ACCORDING TO  
DIVISIONS OF BUSINESS.

**Officers' Salaries:** The division of this expense depends on the organization of each particular bank. The general rule to be followed is that the officers' salaries should be applied to each branch of the business according to their value to that branch. This is to some extent arbitrary, but if equitably estimated will be sufficiently accurate.

**Employees' Salaries:** These should be apportioned according to the branch or branches in which employed. The division should be made on a time basis and presents no difficulty.

**Rent, Light and Heat:** This is divided among the divisions according to the space occupied. Space not chargeable direct to any division, such as lobby, should be apportioned rateably among divisions according to the space they occupy.

**Taxes:** These are charged to the division to which they apply—*e.g.*, General Taxes and Income Tax to Capital and Surplus and Loans. Taxes on bank building according to the rules for the division of rent. In the example given the bank does not own the bank building and therefore pays no taxes on real estate.

**Stationery and Printing, etc., Telephone and Telegraph, Postage, Other Supplies:** These expenses should be divided according to the actual amount consumed by each division. It is not necessary to make any elaborate analysis before dividing them over the different divisions of the bank's business, a careful survey of the work done in each will enable a fair approximation to be made with very little loss of time.

**Insurance, Surety Bonds:** As there are different classes of insurance they are treated accordingly. Premiums for Burglary insurance and surety bonds should be divided according to the divisions of the bank's business, *i.e.*, the proportion due to the insurance of the reserves in vaults will be applicable to Depositors, checking accounts and to Savings accounts, and the insurance of securities to Capital and Surplus. Fire insurance would be divided in the same proportions as Rent.

**Depreciation (or Maintenance):** This is divided according to its nature. If the bank owns its building, the maintenance and depreciation would be apportioned to the divisions according to the rules laid down for Rent, as would depreciation of general fixtures.

Depreciation of furniture or fixtures of a particular division would be charged accordingly.

**Bad Debts and Special Losses:** These are charged to Capital, Surplus and Loans as a general rule.

TABLE II.

## EXPENSE OF DEPOSITORS' CHECKING ACCOUNTS (FROM TABLE I).

*Distributed According to Activity, Size and Number.*

Expense Accounts.	Activity.	Size.	Number.	Total.
Officers' Salaries ...	\$1,100	\$1,100	\$1,100	\$3,300
Employees' Salaries ...	2,600	886	1,734	5,200
Rent ...	2,188	...	1,062	4,250
Taxes ...	...	...	...	...
Stationery and Printing, etc ...	666	...	334	1,000
Other Supplies ...	222	...	111	333
Telephone and Telegraph ...	222	...	111	333
Postage ...	313	...	104	417
Light and Heat ...	128	...	42	170
Insurance ...	26	12	12	50
Surety Bonds ...	...	75	...	75
Depreciation (or maintenance)...	426	...	142	568
Bad Debts and Special Losses...	...	...	...	...
Miscellaneous ...	...	...	...	...
<b>TOTALS</b> ...	<b>\$8,891</b>	<b>\$2,053</b>	<b>\$4,752</b>	<b>\$15,696</b>

**RULES FOR DIVISION OF DEPOSITORS' CHECKING  
ACCOUNTS EXPENSES, ACCORDING TO ACTIVITY,  
SIZE AND NUMBER OF ACCOUNTS.**

**Officers' Salaries :** This expense is divisible among all of the above headings. No exact basis for division is possible which will apply to all banks. The proportion should be judged by the character of the business and the number of officers. In this case, equal parts have been assumed, to avoid long explanation.

**Employees' Salaries :** These should be divided on a time basis—i.e., the time spent on handling items should go into the activity column, the time spent on book-keeping should go into the number column, the time of watchmen should go into the size column. These figures would vary according to the bank. In an active country bank, the activity portion might run about one-half to three-fourths. In a small country bank with few transactions, the greater portion of Employees' salaries would be applicable to number.

**Rent, Light and Heat; Fire Insurance :** As a minimum force is necessary to handle inactive accounts, a certain portion of Rent, say one-fourth, should go to number. The balance goes to activity, as the additional space is necessitated by the increasing volume of business.

**Stationery and Printing, etc. : Other Supplies, Telephone and Telegraph :** These are divided according to consumption—e.g., ledgers go to number, supplies used in handling items to activity.

**Postage :** Should go to activity and number, say three-fourths and one-fourth, respectively.

**Burglary Insurance :** Should go into size column, as also the premiums on Surety bonds.

**Depreciation (or Maintenance) :** Depreciation of Furniture and Fixtures and Equipment is divided as follows:—to activity, that portion which applies on the Fixtures, etc., of the branches handling items only; to size of accounts, depreciation of vaults; to number, the remainder. The major portion of Maintenance of Building goes into activity.

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# APPENDIX E.

## STAMP DUTIES ON INSTRUMENTS.

Description of Instrument.	Proper stamp-duty.		
<b>5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT</b>			
(a) if relating to the sale of a bill of exchange ;	<i>Imperial</i>	...	... Annas Two.
	<i>U. P.</i>	...	... Annas Three.
	<i>Bombay, Punjab, Burma</i>	...	... Annas Four.
(b) if relating to the sale of a Government security, or share in an incorporated Company or other body corporate ;	<i>Imperial.</i> —Subject to a maximum of ten Rupees, one anna for every Rs. 10,000 or part thereof, of the value of the security or share.		
	<i>U. P.</i> —Subject to a maximum of fifteen rupees, one and half annas for every Rs. 10,000 or part thereof, of the value of the security or share.		
	<i>Burma.</i> —Subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security or share.		
	<i>Punjab.</i> —Subject to a maximum of fifteen rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security or share.		
	<i>For Bombay.</i> —Subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security in the case of Government securities but two annas for every Rs. 5,000 or part thereof, of the value of the share if the security is of an incorporated Company or other body corporate.		
(c) if not otherwise provided for.	<i>Imperial</i>	...	... Annas Eight.
	<i>U. P.</i>	...	... Annas Twelve.
	<i>Punjab, Bombay, Burma</i>	...	... One Rupee.

Description of Instrument.	Proper stamp-duty.
6. AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, P A W N O R PLEDGE, that is to say, any instrument evidencing an agreement relating to—	
(1) the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or,	
(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—	
(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement;	<i>Imperial, Bombay and Burma.</i> —The same duty as a Bill of Exchange [No. 13 (b)] for the amount secured.
	<i>For U. P. —</i>
	(i) when the amount of the loan or debt does not exceed Rs. 200 Rs. A. P. 0 3 0
	(ii) when it exceeds " 200
	but does not exceed " 400 0 8 0
	" " Rs. 400 " 600 0 12 0
	" " " 600 " 800 1 0 0
	" " " 800 " 1,000 1 4 0
	" " " 1,000 " 1,200 1 8 0
	" " " 1,200 " 1,600 2 0 0
	" " " 1,600 " 2,500 3 0 0
	" " " 2,500 " 5,000 6 0 0
	" " " 5,000 " 7,500 9 0 0

Description of Instrument.	Proper stamp-duty.
When it exceeds Rs. 7,500 but does not exceed	Rs. a. p.
Rs. 10,000	12 0 0
" " " 10,000 " 15,000	18 0 0
" " " 15,000 " 20,000	24 0 0
" " " 20,000 " 25,000	30 0 0
" " " 25,000 " 30,000	36 0 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000 ...	12 0 0
<div> <div>If drawn singly</div> <div>If drawn in set of two for each part set.</div> <div>If drawn in set of three for each part set.</div> </div>	
<i>For Punjab.—</i>	
(i) When the amount of the loan or debt does not exceed	Rs. a. p. Rs. a. p. Rs. a. p.
(ii) when it exceeds	Rs. 200 0 4 6 0 3 0 0 1 6
but does not exceed	Rs. 200
Rs. 400 0 9 0 0 4 6 0 3 0	" " 400 0 18 6 0 7 6 0 4 6
" " 600 1 2 0 0 9 0 0 6 0	" " 800 1 6 6 0 12 0 0 7 6
" " 1,000 1 11 0 0 18 6 0 9 0	" " 1,200 2 4 0 1 2 0 0 12 0
" " 1,600 2 5 0 1 11 0 1 2 0	" " 2,500 3 6 0 3 6 0 2 4 0
" " 5,000 10 2 0 5 1 0 3 6 0	" " 7,500 13 8 0 6 12 0 4 8 0
" " 10,000 20 4 0 10 2 0 6 12 0	" " 15,000 27 0 0 13 8 0 9 0 0
" " 20,000 33 12 0 16 14 0 11 4 0	" " 25,000 40 8 0 20 4 0 13 8 0
and for every additional Rs. 10,000 or part thereof	in excess of Rs. 30,000 13 8 0 6 12 0 4 8 0
(b) if such loan or debt is repayable not more than three months from the date of such instrument.	
<i>Imperial, Burma and Bombay.</i> —Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured.	
<i>For U. P.</i> —Half the duty payable on a loan or debt under clause (a) for the amount secured.	
<i>For Punjab.</i> —Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured.	



Description of Instrument.	Proper stamp-duty.
<p><i>Exemption.</i>— Instrument of pawn or pledge of goods if unattested.</p>	
<p>7. APPOINTMENT IN EXECUTION OF A POWER whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will.</p>	<p><i>Imperial</i>           ...           ... Rupees Fifteen.</p> <p><i>For Punjab</i>       ...           ... Rupees Twenty-five.</p> <p><i>For U. P.</i>—Appointment in execution of a power, where made by any writing not being a will—</p> <p>(a) where the value of the property does not exceed Rs. 1,000... Rupees Fifteen.</p> <p>(b) in any other case           ... Rupees Twenty-five.</p> <p><i>For Bombay and Burma.</i>—Appointment in execution of a power, where made by any writing not being a will—</p> <p>(a) of Trustees                   ... Fifteen Rupees only.</p> <p>(b) of Property, moveable or immoveable           ... Thirty Rupees only.</p>
<p>10. ARTICLES OF ASSOCIATION OF A COMPANY.</p>	<p><i>Imperial</i>           ...           ... Rupees Twenty-five.</p> <p><i>U. P.</i>               ...           ... Fifty rupees.</p> <p><i>For Bombay and Burma.</i>—</p> <p>(a) Where the company has no share capital or the nominal share capital does not exceed Rs. 2,500 ...           ...           ... Rupees Twenty-five.</p> <p>(b) Where the nominal share capital exceeds Rs. 2,500 but does not exceed Rs. 1,00,000           ...           ... Rupees Fifty.</p> <p>(c) Where the nominal share capital exceeds Rs. 1,00,000           ...           ... Rupees one hundred.</p> <p><i>For Punjab.</i>—</p> <p>(a) When the authorized share capital does not exceed Rs. 1,00,000           ... Rupees Twenty-five.</p> <p>(b) In other cases...           ... Rupees Fifty.</p>

Description of Instrument.	Proper stamp-duty.
<b>Exemption.</b> --  Articles of any association not formed for profit and registered under Section 26 of the Indian Companies Act, 1912.  See also Memorandum of Association of a Company (No. 39).  12. AWARD, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition on a reference made otherwise than by an order of the Court in the course of a suit.--  (a) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ;  (b) in any other case.  <b>Exemption (U. P.)</b>  AWARD under the Bombay District Municipal Act, 1901, Section 100, or the Bombay Hereditary	   

Description of Instrument.	Proper stamp-duty.		
<p>Offices Act, 1874, Section 18, or the United Provinces Municipalities Act, 1916, Section 324 (1) or the United Provinces District Boards Act, 1922, Section 190 (1).</p>			
<p>13. BILL OF EXCHANGE ..... as defined by S. 2 (2) not being a Bond, Bank-note or currency note—</p>			
<p>(b) where payable otherwise than on demand but not more than one year after date or sight ;</p>	<p><i>Imperial, Bombay, Punjab, U. P. and Burma.—</i></p>		
<p>if the amount of the bill or note does not exceed Rs. 200 ;</p>			
<p>if it exceeds Rs. 200 and does not exceed Rs. 400 ;</p>	<p>If drawn singly.</p>	<p>If drawn in set of two, for each part of the set.</p>	<p>If drawn in set of three, for each part of the set.</p>
<p>if it exceeds Rs. 400 but does not exceed Rs. 600 ;</p>			
<p>if it exceeds Rs. 600 but does not exceed Rs. 800 ;</p>			
<p>if it exceeds Rs. 800 but does not exceed Rs. 1,000 ;</p>			
<p>if it exceeds Rs. 1,000 but does not exceed Rs. 1,200 ;</p>			
	<p>Rs. a. p.</p>	<p>Rs. a. p.</p>	<p>Rs. a. p.</p>
	<p>0 3 0</p>	<p>0 2 0</p>	<p>0 1 0</p>
	<p>0 6 0</p>	<p>0 3 0</p>	<p>0 2 0</p>
	<p>0 9 0</p>	<p>0 5 0</p>	<p>0 3 0</p>
	<p>0 12 0</p>	<p>0 6 0</p>	<p>0 4 0</p>
	<p>0 15 0</p>	<p>0 8 0</p>	<p>0 5 0</p>
	<p>1 2 0</p>	<p>0 9 0</p>	<p>0 6 0</p>

\* The following letter, brackets and words were omitted by Act V of 1927, S. 5 (9) :—

" (a) where payable on demand..... one anna."

Description of Instrument.	Proper stamp-duty.								
	If drawn singly.			If drawn in set of two, for each part of the set.			If drawn in set of three, for each part of the set.		
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	1	8	0	0	12	0
if it exceeds Rs. 1,200 but does not exceed Rs. 1,600;									
if it exceeds Rs. 1,600 but does not exceed Rs. 2,500 ;	2	4	0				1	2	0
if it exceeds Rs. 2,500 but does not exceed Rs. 5,000 ;	4	8	0				2	4	0
if it exceeds Rs. 5,000 but does not exceed Rs. 7,500 ;	6	12	0				3	6	0
if it exceeds Rs. 7,500 but does not exceed Rs. 10,000 ;	9	0	0				4	8	0
if it exceeds Rs. 10,000 but does not exceed Rs. 15,000 ;	13	8	0				6	12	0
if it exceeds Rs. 15,000 but does not exceed Rs. 20,000 ;	18	0	0				9	0	0
if it exceeds Rs. 20,000 and does not exceed Rs. 25,000 ;	22	8	0				11	4	0
if it exceeds Rs. 25,000 but does not exceed Rs. 30,000 ;	27	0	0				13	8	0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000.	9	0	0				4	8	0

Description of Instrument.	Proper stamp-duty.						
(c) where payable at more than one year after date or sight.	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> —The same duty as on a Bond (No. 15) for the same amount.						
14. BILL OF LADING* (including a through bill of lading).	<table> <tr> <td><i>Imperial</i> ...</td><td>Annas Four.</td></tr> <tr> <td><i>For U. P. and Burma...</i> ...</td><td>Annas Six.</td></tr> <tr> <td><i>For Bombay and Punjab</i> ...</td><td>Annas Eight.</td></tr> </table> <p>[N. B.—If a bill of lading is in drawn parts, the proper stamp therefor must be borne by each one of the set.]</p>	<i>Imperial</i> ...	Annas Four.	<i>For U. P. and Burma...</i> ...	Annas Six.	<i>For Bombay and Punjab</i> ...	Annas Eight.
<i>Imperial</i> ...	Annas Four.						
<i>For U. P. and Burma...</i> ...	Annas Six.						
<i>For Bombay and Punjab</i> ...	Annas Eight.						
<i>Exemptions.</i> —							
(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1908, and are to be delivered at another place within the limits of the same port.							
(b) Bill of lading when executed out of British India and relating to property to be delivered in British India.							
15. BOND † [as defined by Section 2 (5)] not being a Debenture (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act, 1870.							
Where the amount or value secured does not exceed Rs 10.	<i>Imperial, U. P., Bombay, Punjab and Burma</i> ... Annas Two						

\* Bills of lading of Inland Steamer Companies have been exempted from the duty payable under this Article. *Vide* Gazette of India, 1904, Part 1 page 38.

† Personal security bond for stay of execution need not be stamped under Art. 15 *vide* A I.R. 1929 Lah. 205.

Description of Instrument.	Proper stamp-duty.
Where it exceeds Rs. 10 but does not exceed Rs. 50.	<i>Imperial, U. P., Punjab, Bombay and Burma ...</i> Annas four.
Where it exceeds Rs. 50 but does not exceed Rs. 100.	<i>Imperial, U. P., Punjab, Bombay and Burma ...</i> Annas eight.
Where it exceeds Rs. 100 but does not exceed Rs. 200.	<i>Imperial, U. P., Punjab and Bombay ...</i> Rupee one. <i>For Burma ...</i> ... One rupee four annas.
Where it exceeds Rs. 200 but does not exceed Rs. 300.	<i>Imperial and U. P.,</i> Rupee one and annas eight. <i>For Punjab...</i> Rupee one and annas fourteen. <i>For Bombay and Burma...</i> Two Rupees, four annas.
Where it exceeds Rs. 300 but does exceed Rs. 400	<i>Imperial and U. P.</i> ... Rupees two. <i>For Punjab</i> ... Rupees two and annas eight. <i>For Bombay and Burma</i> ... Three rupees.
Where it exceeds Rs. 400 but does not exceed Rs. 500.	<i>Imperial and U. P.</i> ... Two Rupees eight annas. <i>For Punjab</i> ... Three rupees two annas. <i>For Bombay and Burma.</i> Three rupees twelve annas
Where it exceeds Rs. 500 but does not exceed Rs. 600	<i>Imperial</i> ... Three rupees. <i>For U. P.</i> ... Three rupees four annas. <i>For Punjab, Bombay and Burma</i> Four rupees eight annas.
Where it exceeds Rs. 600 but does not exceed Rs. 700.	<i>Imperial</i> ... Three rupees eight annas. <i>For U. P.</i> ... Four rupees. <i>For Punjab, Bombay and Burma</i> ... Five rupees four annas.
Where it exceeds Rs. 700 but does not exceed Rs. 800	<i>Imperial</i> ... Rupees four. <i>For U. P.</i> ... Four rupees twelve annas. <i>For Punjab, Bombay and Burma</i> ... Six rupees.
Where it exceeds Rs. 800 but does not exceed Rs. 900.	<i>Imperial</i> ... Four rupees, eight annas. <i>For U. P.</i> ... Five rupees eight annas. <i>For Punjab, Bombay and Burma</i> ... Six rupees twelve annas.
Where it exceeds Rs. 900 but does not exceed Rs. 1,000	<i>Imperial</i> ... Five rupees. <i>For U. P.</i> ... Six rupees, four annas. <i>For Punjab, Bombay and Burma</i> ... Seven rupees, eight annas.

Description of Instrument.	Proper stamp-duty.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	<i>Imperial</i> ... .. Rupees two annas eight. <i>For U. P., Punjab, Bombay and Burma</i> ... Three rupees twelve annas.
<p><i>See Administration Bond (No. 2), Bot-tomry Bond (No. 16), Customs Bond (No. 26), In-demnity Bond (No. 34), Respon-dentia Bond (No. 56), Security Bond (No. 57).</i></p>	
<p><i>Exemptions :—</i></p>	
<p>Bond, when exe-cuted by:—(a) head-man nominated un-der rules framed in accordance with the Bengal Irrigation Act, 1876, Section 99, for the due per-formance of their duties, under that Act;</p>	<p>For all places except Burma,</p>
<p>(b) any person for the purpose of guaranteeing that the local income derived from pri-vate subscriptions to a charitable dis-pensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.</p>	
<p>23. CONVEYANCE [as defined by Section 2 (10), not being a transfer charged or exempted under (No. 62)—</p>	

Description of Instrument.	Proper stamp-duty.
Where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50 ;	<i>Imperial, U. P., Bombay and Burma</i> ... Eight annas. <i>For Punjab</i> ... Twelve annas.
Where it exceeds Rs. 50 but does not exceed Rs. 100.	<i>Imperial, U. P., Bombay and Burma</i> ... One Rupee. <i>For Punjab</i> ... One rupee, eight annas.
Where it exceeds Rs. 100 but does not exceed Rs. 200.	<i>Imperial, U. P. and Bombay</i> ... Two rupees. <i>For Burma</i> ... Two rupees eight annas. <i>For Punjab</i> ... Three rupees.
Where it exceeds Rs. 200 but does not exceed Rs. 300.	<i>Imperial and U. P.</i> ... Three rupees. <i>For Punjab, Bombay and Burma</i> ... Four rupees eight annas.
Where it exceeds Rs. 300 but does not exceed Rs. 400.	<i>Imperial and U. P.</i> ... Four rupees. <i>For Punjab, Bombay and Burma</i> ... Six rupees.
Where it exceeds Rs. 400 but does not exceed Rs. 500.	<i>Imperial and U. P.</i> ... Five rupees. <i>For Punjab, Bombay and Burma</i> ... Seven rupees eight annas.
Where it exceeds Rs. 500 but does not exceed Rs. 600.	<i>Imperial</i> ... Six rupees. <i>For U. P.</i> ... Six rupees, eight annas. <i>For Punjab, Bombay and Burma</i> ... Nine rupees.
Where it exceeds Rs. 600 but does not exceed Rs. 700.	<i>Imperial</i> ... Seven rupees. <i>For U. P.</i> ... Eight rupees. <i>For Punjab, Bombay and Burma</i> ... Ten rupees eight annas.
Where it exceeds Rs. 700 but does not exceed Rs. 800.	<i>Imperial</i> ... Eight rupees. <i>For U. P.</i> ... Ninerupees eight annas. <i>For Punjab, Bombay and Burma</i> ... Twelve rupees.
Where it exceeds Rs. 800 but does not exceed Rs. 900.	<i>Imperial</i> ... Nine rupees. <i>For U. P.</i> ... Eleven rupees. <i>For Punjab, Bombay and Burma</i> ... Thirteen rupees eight annas.
Where it exceeds Rs. 900 but does not exceed Rs. 1,000	<i>Imperial</i> ... Ten rupees. <i>For U. P.</i> ... Twelve rupees eight annas. <i>For Punjab Bombay and Burma</i> ... Fifteen rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	<i>Imperial</i> ... Five rupees. <i>For U. P., Punjab, Bombay and Burma</i> ... Seven rupees eight annas.



Description of Instrument.	Proper stamp-duty.
<p>23. Conveyance [as defined by section 2 (10)], not being a transfer charged or exempted under No. 62.*</p> <p><i>Exemption.</i>— Assignment of copyright by entry made under the Indian Copyright Act, 1914, Section 5.</p> <p>[For Punjab only.— Provided that a conveyance of immoveable property situated within a Municipality, Cantonment or Notified Area shall be chargeable with a stamp duty</p>	

\* For the City of Bombay.

Where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs. 200 but does not exceed Rs. 300				Rs. a, p.	
Where it exceeds Rs.	300	but does not exceed Rs.	400	...	8 8 0
"	400	"	500	...	12 0 0
"	500	"	600	...	15 8 0
"	600	"	700	...	19 0 0
"	700	"	800	...	22 8 0
"	800	"	900	...	26 0 0
"	900	"	1,000	...	29 8 0
and for every Rs. 500 or part thereof in excess of Rs. 1,000				...	33 0 0
				...	17 8 0

For the Cities of Ahmedabad, Poona & Karachi.

Where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs. 200 but does not exceed Rs. 300				Rs. a, p.	
"	300	"	400	...	6 8 0
"	400	"	500	...	9 0 0
"	500	"	600	...	11 8 0
"	600	"	700	...	14 0 0
"	700	"	800	...	16 8 0
"	800	"	900	...	19 0 0
"	900	"	1,000	...	21 8 0
and for every Rs. 500 or part thereof in excess of Rs. 1,000				...	24 0 0
				...	12 8 0

Description of Instrument.	Proper stamp-duty.
at double the rate hereinbefore provided.	
<p><i>Explanation.</i>— For the purpose of this proviso, "notified area" means an area in regard to which a notification has been issued or may hereafter be issued under Section 241 of the Punjab Municipal Act, 1911, and in which the total population is according to the latest census more than five thousand in number.]</p>	
CO PARTNER-SHIP—DEED — <i>See</i> Partnership (No. 46).	
25. COUNTER-PART OR DUPLICATE of any instrument chargeable with duty and in respect of which the proper duty has been paid,	
(a) if the duty with which the original instrument is chargeable does not exceed one rupee (in Bombay, two rupees). (In Punjab—does not exceed one rupee, eight annas);	<i>Imperial, Bombay, Punjab, U. P. and Burma.</i> —The same duty as is payable on the original.
(b) in any other case.	<i>Imperial</i> ... One rupee. <i>For Bombay and Burma...</i> Two rupees.

Description of Instrument.	Proper stamp-duty.
<p><i>For Punjab and U. P.</i>—in any other case not falling within the provisions of Section 6-A.</p>	<p><i>For Punjab and U. P.</i>—One rupee eight annas.</p>
<p><b>Exemption.</b>—Counter-part of any lease granted to a cultivator when such lease is exempted from duty.</p>	
<p><b>27. DEBENTURE</b>—(whether a mortgage debenture or not), being a marketable security transferable—</p>	
<p>(a) by indorsement or by a separate instrument of transfer ;</p>	<p><i>Imperial, Bombay and U. P.</i>—The same duty as a Bond (No. 15) for the same amount.  <i>For Punjab.</i>—The same duty as a Bottomry Bond (No. 16)* for the same amount.</p>
<p>(b) by delivery.</p>	<p><i>Imperial, Bombay, Punjab and Burma.</i>—The same duty as a conveyance (No. 21) for a consideration equal to the face amount of the debenture.</p>
<p>[<i>In U. P.</i> Where the face amount of the debenture does not exceed Rs. 100.</p>	<p><i>For U. P.</i>— One rupee four annas.</p>
<p>Where it exceeds Rs. 100 but does not exceed Rs. 200.</p>	<p>Two rupees eight annas</p>
<p>Where it exceeds Rs. 200.]</p>	<p>The same duty as a conveyance (No. 23) for a consideration equal to the face amount of the debenture.</p>
<p><b>Explanation.</b>—The term 'debenture' includes any interest coupons attached thereto, but the amount of such coupons shall not be</p>	

\* Vide Indian Stamp (Punjab Amendment) Act, 1922.

Description of Instrument.	Proper stamp-duty.
included in estimating the duty.	
<p><b>Exemption.</b>--A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debentures so issued or expressed to be issued in terms of the said mortgage deed.*</p>	
<p>See also Bond (No. 15) and Sections 8 and 55.</p>	
<p>DECLARATION OF ANY TRUST.— See Trust (No. 64).</p>	
<p><b>28. DELIVERY ORDER IN RESPECT OF GOODS,</b> that is to say any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in</p>	<p><i>Imperial, Bombay, Punjab, U. P. and Burma ...</i> Two annas.</p>

\* Certificate of registered debenture stock should be stamped under this Article, 99 I. C. 315.

Description of Instrument.	Proper stamp-duty.
<p>which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.</p> <p>DEPOSIT OF TITLE-DEEDS — <i>See</i> Agreement relating to DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6).</p> <p>DISSOLUTION OF PARTNERSHIP.—<i>See</i> Partnership (No. 46).</p> <p>32. FURTHER CHARGE—Instrument of—that is to say—any instrument imposing a further charge on mortgaged property —</p> <p>(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession) ;</p> <p>(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—</p>	<p><i>Imperial, Bombay Punjab, U. P. and Burma.</i>—The same duty as a conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.</p>

Description of Instrument.	Proper stamp-duty.
(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument;	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> —The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
(ii) if possession is not so given.—	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> .—The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.
34. INDEMNITY BOND.	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> .—The same duty as a Security-Bond (No. 57) for the same amount.
INSURANCE.— See Policy of Insurance (No. 47).	
36. LETTER OF ALLOTMENT of shares in any company or proposed company or in respect of any loan to be raised by any company or proposed company.	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> ... Two annas.
See also CERTIFICATE OR OTHER DOCUMENT (No. 19).	
37. LETTER OF CREDIT, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> ... Two annas
LETTER OF GUARANTEE.— See AGREEMENT (No. 9).	

Description of Instrument.	Proper stamp duty.
<p>39. MEMORANDUM OF ASSOCIATION OF A COMPANY--</p>	
<p>(a) if accompanied by Articles of Association under Section 17 of the Indian Companies Act, 1913 ;</p>	<p><i>Imperial</i> ... .. Fifteen rupees.  <i>Bombay, Punjab, U. P. and Burma</i> ... Thirty rupees.</p>
<p>(b) if not so accompanied.</p>	<p><i>Imperial</i> ... .. Forty rupees.  <i>For Bombay, Punjab, U. P. and Burma</i> ... Eighty rupees.</p>
<p><b>Exemption :—</b>          Memorandum of any Association not formed for profit and registered under Section 26 of the Indian Companies Act, 1913.</p>	
<p>40. MORTGAGE DEED— not being [an Agreement relating to deposit of title deeds, Pawn or Pledge (No. 6)], Bottomry Bond (No 16), Mortgage of CROP (No. 41), Respondentia Bond (No. 56), or Security Bond (No. 57).</p>	
<p>(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ;</p>	<p><i>Imperial, Bombay, Punjab, U. P. and Burma.</i>—          The same duty as a conveyance (No 23) for a consideration equal to the amount secured by such deed.</p>
<p>(b) when possession is not given or agreed to be given as aforesaid.</p>	<p><i>Imperial, Bombay, Punjab, U. P. and Burma.</i>—          The same duty as on a Bond (No. 15) for the amount secured by such deed.</p>

Description of Instrument.	Proper stamp-duty.						
<p><i>Explanation</i>—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article ;</p>							
<p>(c)* when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—</p>							
<p>for every sum secured not exceeding Rs. 1,000 ;</p>	<table> <tr> <td><i>Imperial and Burma</i></td><td>... Eight annas.</td></tr> <tr> <td><i>For U. P. and Punjab</i></td><td>... Twelve annas.</td></tr> <tr> <td><i>For Bombay</i></td><td>... One rupee.</td></tr> </table>	<i>Imperial and Burma</i>	... Eight annas.	<i>For U. P. and Punjab</i>	... Twelve annas.	<i>For Bombay</i>	... One rupee.
<i>Imperial and Burma</i>	... Eight annas.						
<i>For U. P. and Punjab</i>	... Twelve annas.						
<i>For Bombay</i>	... One rupee.						
<p>and for every Rs. 1,000 part thereof secured in excess of Rs. 1,000.</p>	<table> <tr> <td><i>Imperial and Burma</i></td><td>... Eight annas.</td></tr> <tr> <td><i>For Punjab and U. P.</i></td><td>... Twelve annas.</td></tr> <tr> <td><i>For Bombay</i> ...</td><td>... One rupee.</td></tr> </table>	<i>Imperial and Burma</i>	... Eight annas.	<i>For Punjab and U. P.</i>	... Twelve annas.	<i>For Bombay</i> ...	... One rupee.
<i>Imperial and Burma</i>	... Eight annas.						
<i>For Punjab and U. P.</i>	... Twelve annas.						
<i>For Bombay</i> ...	... One rupee.						
<p><i>Exemptions.</i>—</p>							
<p>(1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1863, or the Agriculturists Loans Act, 1884, or by their sureties as security for the repayment of such advances.</p>							

\* A second mortgage in which the first mortgage merges should be stamped for whole amount, 25 B. 370.



Description of Instrument.	Proper stamp-duty.
(2) Letter of hypothecation accompanying a bill of exchange.	
42. NOTARIAL ACT that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a PROTEST (No. 50) made or signed by a NOTARY PUBLIC in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.	<i>Imperial</i> ... One rupee. <i>For Bombay, Punjab, U. P. and Burma</i> ... Two rupees.
See also PROTEST OF BILL OR NOTE (No. 50).	
48. POWER OF ATTORNEY * [as defined by Section 2 (21)], not being a PROXY (No. 52)	
(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents ;	<i>Imperial and U. P.</i> ... Eight annas. <i>For Bombay, Punjab and Burma</i> ... One rupee.
(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882 †;	<i>Imperial and U. P.</i> ... Eight annas. <i>For Bombay, Punjab and Burma</i> ... One rupee.

\* The stamp duty is determined not by the number of persons executing the power of attorney, but by the number of agents appointed, 1925 Oudh 132.

† Bangoon Small Cause Court Act, 1920.

Description of Instrument.	Proper stamp-duty.
(c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a) ;	<i>Imperial and U. P.</i> ... One rupee. <i>For Bombay, Punjab and Burma</i> ... Two rupees.
(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally ;	<i>Imperial and U. P.</i> ... Five rupees. <i>For Bombay, Punjab and Burma</i> ... Ten rupees.
(e) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ;	<i>Imperial and U. P.</i> ... Ten rupees. <i>For Bombay, Punjab and Burma</i> ... Twenty rupees.
(f) when given for consideration and authorising the attorney to sell any immoveable property ;	<i>Imperial, Bombay, Punjab, U. P. and Burma.</i> —The same duty as a Conveyance (No. 23), for the amount of the consideration.
(g) in any other case.	<i>Imperial and U. P.</i> —One rupee for each person authorized. <i>For Bombay, Punjab and Burma.</i> —Two rupees for each person authorized.
<b>Explanation.</b> — For the purposes of this article more persons than one when belonging to the same firm shall be deemed to be one person.	<i>N.B.</i> —The term "registration" includes every operation incidental to registration under the Indian Registration Act, 1908.
49. PROMIS- SORY NOTE as defined by Section 2 (22).—	

Description of Instrument.	Proper stamp-duty.
(a) when payable on demand—	
(i) when the amount or value does not exceed Rs. 250 ;	<i>Imperial, Bombay, Punjab, U. P. and Burma.</i> —One anna.
(ii) when the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000 ;	<i>Imperial, Bombay, Punjab, U. P. and Burma.</i> —Two annas.
(iii) in any other case ;	<i>Imperial, Bombay, Punjab, U. P. and Burma.</i> —Four annas.
(b) when payable otherwise than on demand.	<i>Imperial, Bombay, Punjab, U. P. and Burma.</i> —The same duty as a Bill of Exchange (No 13) for the same amount payable otherwise than on demand.
50. PROTEST OF BILL OR NOTE, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.	<i>Imperial</i> ... One rupee. <i>For Bombay, Punjab, U. P. and Burma.</i> —Two rupees.
52. PROXY empowering any person to vote at any election of the members of a district or local board or of a body of Municipal Commissioners or at any one meeting of (a) members of an incorporated company or other body corporate whose stock or funds is or	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> ... Two annas.

Description of Instrument.	Proper stamp-duty.
are divided into shares and transferable, (b) a local authority, or (c) proprietors, members or contributors to the funds of any institution.	
53. RECEIPT [as defined by Section 2 (23)] for any money or other property the amount or value of which exceeds twenty-rupees	<i>Imperial, Bombay, Punjab, U. P. and Burma</i> ... One anna .
<p data-bbox="163 663 291 686"><i>Exemptions</i></p> <p data-bbox="138 686 239 709"><i>Receipt—</i></p> <p data-bbox="114 709 329 1233">(a) endorsed on or contained in any instrument duly stamped [or any instrument exempted]* under the proviso to Section 3 (instruments executed on behalf of the Government) [or any cheque or bill of exchange payable on demand]†acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest or annuity or other periodical payment thereby secured ;</p> <p data-bbox="114 1256 329 1319">(b) for any payment of money without consideration ;</p>	

\* Substituted for the words " or exempted " by Act XVIII of 1928.

† Inserted by Act *Ibid.*

Description of Instrument.	Proper stamp-duty.
(c) for any payment of rent by a cultivator on account of land assessed to Government revenue or (in the Presidencies of Fort St. George and Bombay) of Inam lands ;	
(d) for pay or allowances by Non-Commissioned Officers, soldiers or air-men of His Majesty's military or air forces, when serving in such capacity, or by mounted police-constables ;	
(e) given by holders of family certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a Non-Commissioned Officer, soldier or airman of any of the said forces and serving in such capacity ;	
(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their services as such Non-Commissioned Officers, soldiers or airmen and not serving the Government in any other capacity ;	

Description of Instrument.	Proper stamp-duty.
(g) given by a headman or lambar-dar for land revenue or taxes collected by him ;	
(h) given for money or securities for money deposited in the hands of any banker, to be accounted for :	
provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :	
provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for, or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.	

#### 54. RE-CONVEY- ANCE OF MORT- GAGED PROPER- TY—

Description of Instrument.	Proper stamp-duty.	
(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000 ;	<i>Imperial, Punjab and U. P.</i> —The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the re-conveyance.	
	<i>For Bombay.</i> —The same duty as a Bond (No. 15) for the amount of such consideration as set forth in the re-conveyance.	
	<i>For Burma (a and b).</i> —Subject to a maximum of two rupees eight annas the same duty as a Conveyance (No. 23) for the amount of the consideration for the mortgage.	
(b) in any other case	<i>Imperial and Bombay</i> <i>For U. P. and Punjab</i>	Ten rupees. Fifteen rupees
<p><b>55. RELEASE</b> that is to say any instrument (not being such a release as is provided for by Section 23-A) whereby a person renounces a claim upon another person or against any specified property—</p>		
(a) if the amount or value of the claim does not exceed Rs 1,000 ;	<i>Imperial, Bombay, U. P. and Burma.</i> —The same duty as a Bond (No. 15) for such amount or value as set forth in the release.	
	<i>For Punjab.</i> —The same duty as a Bottomry Bond (No. 16) * for such amount or value as set forth in the release.	
(b) in any other case.	<i>Imperial</i> ... <i>For U. P., Punjab and Burma</i> ... <i>For Bombay</i>	Five rupees. Seven rupees, eight annas. Ten rupees.
<p><b>57. SECURITY</b> <b>BOND OR MORTGAGE DEED</b> executed by way of security for the due execution of an office, or to account for money or other property received</p>		

\* *Vide* Indian Stamp (Punjab Amendment) Act, 1922.

Description of Instrument.	Proper stamp-duty.
by virtue thereof or executed by a surety to secure the due performance of a contract—	
(a) when the amount secured does not exceed Rs. 1,000 ;	<i>Imperial, Bombay, Punjab, U. P. and Burma.</i> —The same duty as a Bond (No. 15) for the amount secured.
(b) in any other case.	<i>Imperial</i> ... Five rupees. <i>For U. P., Punjab and Burma</i> ... Seven rupees, eight annas.
<i>Exemptions.</i> Bond or other instrument, when executed—	<i>For Bombay</i> ... Ten rupees. <i>For Punjab, Exemptions are.</i> —Bond or other instrument, when executed—
(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, Section 99, for the due performance of their duties under that Act ;	(a) by any person for the purpose of guaranteeing that the local income derived from private subscription to a charitable dispensary or hospital or any other object of public utility, shall not be less than a specified sum per mensem ;
(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;	(b) by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties, as security for the repayment of such advances ;
(c) under No. 3-A of the rules made by the Governor of Bombay in Council under Section 70 of the Bombay Irrigation Act, 1879 ;	(c) by officers of Government or their sureties to secure the due execution of an office, or the due accounting for money or other property received by virtue thereof.



Description of  
Instrument.

Proper stamp-duty.

(d) executed by persons taking advances under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, or by their sureties, as security for the repayment of such advances ;

(e) executed by officers of Government or their sureties to secure the execution of an office or the due accounting for money or other property received by virtue thereof.

59. SHARE WARRANT to bearer issued under the Indian Companies Act, 1913.

*Imperial, Bombay, Punjab and Burma.*—One and a half times the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.

*For U. P.*—The same duty as a debenture transferable by delivery (No. 27 (b) ) for a face amount equal to the nominal amount of the shares specified in the warrant.

*Exemptions —*  
Sharewarrant when issued by a company in pursuance of the Indian Companies Act, 1913, Section 43, to have effect only upon payment, as composition for that duty to the collector of stamp revenue, of—

(a) one and a half times per centum of the whole subscribed capital of the company, or

Description of Instrument.	Proper stamp-duty.												
(b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—one and a half times per centum of the additional capital so issued.													
S C R I P. See C E R T I F I C A T E (No. 19).													
62. TRANSFER (whether with or without consideration)—													
(a) of shares in an incorporated company or other body corporate ;	<i>Imperial, Bombay, Punjab and Burma.</i> —One half of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.												
(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by Section 8 ;	<i>Imperial, Bombay, Punjab and Burma.</i> —One half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.												
(c) of any interest secured by a bond, mortgage-deed or policy of insurance ;													
(i) if the duty on such bond mortgage deed or policy does not exceed five rupees ;	<i>Imperial Bombay, Punjab, U. P. and Burma.</i> —The duty with which such bond mortgage-deed or policy of insurance is chargeable.												
(ii) in any other case ;	<table><tr><td><i>Imperial</i></td><td>...</td><td>...</td><td>Five rupees.</td></tr><tr><td><i>For Punjab, Burma and U. P.</i></td><td>...</td><td>...</td><td>Seven rupees, eight annas.</td></tr><tr><td><i>For Bombay</i></td><td>...</td><td>...</td><td>Ten rupees.</td></tr></table>	<i>Imperial</i>	...	...	Five rupees.	<i>For Punjab, Burma and U. P.</i>	...	...	Seven rupees, eight annas.	<i>For Bombay</i>	...	...	Ten rupees.
<i>Imperial</i>	...	...	Five rupees.										
<i>For Punjab, Burma and U. P.</i>	...	...	Seven rupees, eight annas.										
<i>For Bombay</i>	...	...	Ten rupees.										

Description of Instrument.	Proper stamp-duty.
(d) of any property under the Administrators-Generals' Act, 1913, Section 31;	<i>Imperial and Bombay</i> ... Ten rupees. <i>For U. P., Punjab and Burma</i> ... Fifteen rupees.
(a) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	<i>Imperial and Bombay</i> .—Five rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this article. <i>For Punjab, U.P. and Burma</i> .—Seven rupees, eight annas or such smaller amount as may be chargeable under clauses (a) to (c) of this article.
<i>For U. P.</i> —	
(a) of shares in an incorporated company or other body corporate; or	
(b) of debentures, being marketable securities, whether the debentures is liable to duty or not except debentures provided for by Section 8;	
when the value of the share or the face amount of the debenture does not exceed Rs. 100;	Twelve annas.
when it exceeds Rs. 100 but does not exceed	
Rs. 200	One Rupee eight annas.
„ 200 „ „ 300	Two Rupees four annas.
„ 300 „ „ 400	Three Rupees.
„ 400 „ „ 500	Three Rupees twelve annas.
„ 500 „ „ 600	Four Rupees eight annas.
„ 600 „ „ 700	Five Rupees four annas.
„ 700 „ „ 800	Six Rupees.
„ 800 „ „ 900	Six Rupees twelve annas.
„ 900 „ „ 1,000	Seven Rupees eight annas.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	Three Rupees twelve annas.

Description of  
Instrument.

## Proper stamp-duty.

*Exemptions.*Transfers by  
endorsement—(a) of a bill of  
exchange, cheque,  
or promissory note ;(b) of a bill of  
lading, delivery  
order, warrant for  
goods, or other  
mercantile docu-  
ment of title to  
goods ;(c) of a policy of  
insurance ;(d) of securities  
of the Government  
of India.*See also Section 8.*

65. WARRANT  
FOR GOODS, that  
is to say, any ins-  
trument evidencing  
the title of any  
person therein  
named; or his as-  
signs, or the holder  
thereof, to the  
property in any  
goods lying in or  
upon any dock,  
warehouse or  
wharf, such instru-  
ment being signed  
or certified by or on  
behalf of the per-  
son in whose cus-  
tody such goods  
may be.

*Imperial* ...  
*For Punjab and U. P.*  
*For Bombay and Burma*

Four annas  
Six annas.  
Eight annas.

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*N.B.*—The numerals of Schedule I of the Indian Stamp Act have been  
maintained throughout this Appendix.

# APPENDIX F.

## IMPORTANT QUESTIONS ON BANKING LAW AND PRACTICE.

### *I. Relation of Banker and Customer.*

1. What is the ordinary relation between a banker and his customer ? A customer draws a cheque on a branch where he has sufficient funds available for the payment of it, but his account at another branch of the same bank is overdrawn. Has the banker any right to combine the accounts and dishonour the cheque on the ground that the balance of the combined accounts is not sufficient to meet it ? Is a customer who keeps an account at one branch entitled to draw on another branch ?

2. State the special features of the relation between a banker and his customer. Is the former bound to honour the latter's acceptances ?

3. What is meant by banker's general lien ? State the circumstances under which a banker can exercise this right. Is the banker entitled to a general lien in the following cases :—

(a) X deposits a box containing ornaments for safe custody, but later on becomes indebted to the banker.

(b) A banker discounts a documentary bill for his customer B. On the dishonour of the bill, B offers payment of the amount of the bill together with charges, but the banker claims lien on the documents attached to the bill for the other debts due from B.

4. (1) Can a banker exercise his lien on the sealed boxes kept with him by A for safe custody, (2) dividend warrants handed over to the banker for collection on A's behalf, if A's account with the banker is overdrawn ?

5. In what circumstances does a banker incur liability, and to whom, in replying to a request for a confidential opinion as to the standing and means of a customer ?

### *II. Fixed Deposit Accounts.*

1. Write out a form of deposit receipt and indicate the reasons for its main provisions. Can a person in an emergency recover the amount of the deposit before due date ?

2. Explain the risks run by a banker who buys from strangers, (i) cheques and (ii) fixed deposit receipts.

3. Discuss the legal position of a banker regarding fixed deposits.

4. A bank receives from its customer X a credit containing '*inter alia*' a deposit receipt for Rs. 100 duly receipted by the depositor. As X has obtained this receipt by false pretences from the depositor, and the receipt is marked 'not transferable' would the bank be liable to the depositor?

5. Is a banker justified in returning the cheque of a customer who has money on fixed deposit on the ground that the current account against which the cheque was drawn was overdrawn?

6. Is a banker justified in opening a deposit account in the name of a firm—thus, "Brown Brothers" or "Thomas Brown & Co"? Should not the account be opened in the individual names? Would it alter your answer if the firm had a current account also with the bank?

7. If a deposit stands in the name of John Brown and Maria, his wife, is the endorsement of the receipt by the former alone sufficient discharge for the bank?

8. Does a deposit receipt standing in the maiden name of a lady till after her marriage, require, when dealt with, the endorsement of her husband as well as of herself, and what would be the correct form of the endorsement?

### III. Current Accounts.

1. Explain the risks that a banker runs in opening a current account without any introduction or reference?

2. What precautions should a banker take in opening accounts in the names of minors, married women and clubs?

3. What precautions should a banker take in dealing with the following classes of customers:—

- (1) Registered companies.
- (2) Firms.
- (3) Minors?

4. What precautions should a banker take before opening a current account in the following cases:—

- (1) A limited liability company.
- (2) A trading firm?

5. Under what circumstances should a banker close the account of his customer and to whom should he pay the balance?

6. A firm, A. B. & Co. has an overdrawn account with the Hindustan Bank Ltd.; A. dies, and B. admits C & D as partners in the same firm.

What precautions, if any, has the bank to take in continuing the overdraft? What difference would it make if A had retired instead?

7. A banking account is opened for a limited company, whose Articles state that there shall not be less than three directors, but only two are appointed. The Articles empower any two to sign, and this is duly adhered to.

(a) Is a banker under any obligation to see that another director is appointed?

(b) Does he run any risk in carrying on the account with less than the minimum number of directors required by the Articles of Association?

8. An account being opened in the name of "John Smith" (Manager at Barchester of the Union Friendly Society), 9, King Street, Barchester, would this give the Society any right over the account? Smith, when opening the account, stated that it had no connection with the Society. The word 'Manager' being intended only as a description of Smith?

9. Can a customer of a bank authorise a minor to sign cheques on his behalf, and is a banker justified in accepting the signature of an infant with the consent of the customer?

10. A woman opens an account in her own name "J. G. Orten" and gives the bank authority to honour cheques signed by her husband in her name, J. G. Orten only.

Is the bank safe in acting on this mandate? If the man is an undischarged bankrupt, should the bank accept his wife's authority for him to sign in this manner?

11. A opens an account in his own name, and gives instructions that all cheques shall be signed by himself and countersigned by B, secretary. Has A power to give further instructions without the signature of B for the bank to pay cheques signed by A only, after several cheques have been paid with two signatures?

#### *IV. Drawing and Payment of Cheques and Bills.*

1. Can a customer of a bank draw cheques on ordinary slips of paper? State the reasons why the use of cheque forms is desirable.

2. A customer accepts a bill of exchange payable at his bank to the order of the drawer. Upon presentation at maturity, it is presented and paid. The customer subsequently learns that the drawer's signature is a forgery. Discuss the position of the bank. What difference would it make if the forgery is in the acceptor's signature and not that of the drawer?

3. A banker cashes two cheques for a stranger. Five days after payment it is discovered that the drawer's signature on one and the payee's endorsement on the other are forgeries. What is the position of the banker who cashed the two cheques?

4. Under what circumstances is a banker justified in refusing payment of cheques drawn upon him? What risks does he run in case of unjustifiable dishonour?

5. (a) In the body of a cheque the words Rupees seventy-nine annas three pies six are written whilst the figures read Rs. 71-3-6. How should the paying banker deal with such a cheque on presentation.

(b) What courses are open to a banker on whom a cheque drawn and expressed in foreign currency is presented for payment in India.

6. What risks does a banker run in honouring conditional orders of his customer? What precautions do you suggest for the safeguarding of the interest of the banker who is asked to honour such cheques?

7. A draws a cheque in favour of B for Rs. 1,000. The bank fails before the cheque is presented. Discuss the legal position of A, B and the bank.

8. Differentiate between the liabilities of a paying banker and a collecting banker. A cheque drawn on the National Bank of India, Ltd., payable to the Union Bank of India, Ltd., account A/B, or order is cashed and placed to the credit of C D. Discuss the liability of both the banks.

9. What action should a banker take on presentation of a cheque cut in two pieces pasted together?

10. Explain the statutory protection given to the banker in this country. Does it extend to drafts drawn by a branch of a bank on its head office? In what respects does it differ from the protection given to bankers in England?

11. A person draws a cheque and sends it by post in payment of a debt. What protection, if any, is afforded to him and his creditor by

(a) crossing the cheque generally;

(b) crossing the cheque "not negotiable"?

12. A customer of a bank draws a cheque for Rs. 300 inadvertently leaving blanks before the amount both in words and in figures. The amount is fraudulently raised by the payee to Rs. 3,300, and the cheque is presented and cashed. Discuss the position of the bank.

13. Define the term "indorsement." What is the liability of the indorser of a bill and to whom? An old man with feeble sight is induced to sign his name on the back of a bill under the pretext that it is a petition to the Crown. Does he incur the liability of an indorser? Give reasons for your reply.



14. On what points should a banker satisfy himself before passing a cheque presented at his counter? If a cheque is crossed specially to more than one banker, what action should be taken on presentation by the banker on whom it is drawn?

15. Examine the following endorsements from the point of view of the paying banker :—

- (1) A cheque payable to H. Billimoria and endorsed Sirin Billimoria, widow of the late H. Billimoria.
- (2) An endorsement in pencil.
- (3) An endorsement by a rubber stamp.

16. Give the correct forms of endorsements for cheques made payable to the order of the following payees :—

- (1) Dr. Annie Besant.
- (2) Miss Hira Cooper.
- (3) The Hon. Secretary and Treasurer, Punjab Club.
- (4) The Indian Toys Company Ltd.
- (5) Western Stores per A. B. Desai.

17. What is your opinion about the following endorsements on order cheques :—

- (a) Payable to Sir David Mason and endorsed " Sir David Mason ".
- (b) Payable to Mrs. Edward Howard and endorsed as " Kathelene Howard ".
- (c) Payable to Indian Cotton Co., and endorsed " John Smith, Manager, Indian Cotton Company ".
- (d) Payable to Ram Ganpat and endorsed " Per pro Ram Ganpat, Moru Hari ".
- (e) Payable to John Brown account Jame Grace and endorsed " John Brown ".
- (f) Payable to L. Lajpat Rai and endorsed as Lajpat Rai.

18. Give examples of endorsements in the following cases :—

- (i) an unmarried woman,
- (ii) a widow,
- (iii) an illiterate person,
- (iv) a firm,
- (v) a registered company.

19. A banker honours a cheque and a bill domiciled with him, but afterwards finds that the drawer's signatures on both of them are forged. Examine his position in both cases.

20. Give proper endorsements for cheques made payable to the following payees :—

- (a) The Archdiocese of Bombay.
- (b) X Y & Co. Ltd.
- (c) Lieut. Col. J. Roberts, I. M. S.
- (d) King Bros.
- (e) Kashinath & Jayawant Ramchandra.

21. Give proper forms of endorsements for cheques made payable to the order of the following :—

- (1) Mrs. Rati Lal Dalal.
- (2) The Executors of Sir David Mason.
- (3) The Trustees of the late John Brown.
- (4) The Tata Iron and Steel Co., Ltd.
- (5) The Hon. Secretary & Treasurer, The Sydenham College Gymkhana.

22. Under what circumstances can a banker stop payment of a cheque ?

23. A cheque for Rs. 500 drawn in favour of X is stolen. X notifies the loss to the bank and subsequently the cheque is presented for encashment. State the precautions which a paying banker should take to safeguard his own interests.

24. On August 25, a cheque post-dated September 1 for Rs. 500 is presented and paid reducing the customer's balance to Rs. 200. Two days later a cheque dated August 23, for Rs. 600 is presented but is returned marked N/S. Discuss the legal position of the banker in this case.

25. A banker has honoured the following three cheques :—

- (1) An order cheque with a forged endorsement of the payee.
- (2) A crossed cheque on which the drawer's signature is a forged one.
- (3) Post-dated cheque.

What risks has the banker to run in each of these cases ?

26. A banker cashes for his customer a crossed cheque drawn upon a local bank. What risks does he run ?

27. Distinguish between the legal position of a banker in regard to cheques drawn upon him and his customers' acceptances domiciled with him.

28. A cheque payable to Ramchandra & Co. and crossed "not negotiable" is presented by Dastur & Co. through the Indian Bank Ltd. Is the paying banker justified in returning the same with remarks "the cheque appears to have been negotiated"? Give reasons for your answer.

29. A man draws a cheque for Rs. 50 and inadvertently leaves blanks before the amount both in words and in figures. The cheque is fraudulently raised by the payee. With how much can the bank debit the customer ?

30. A. B. dies. His eldest son brings to A. B.'s banker cheques unendorsed payable to the order of A. B. and requires him to collect them. State fully the various points in banking practice which his request will raise.

#### *V. Collection of Cheques and Bills.*

1. What risks does a banker run in cashing cheques drawn upon other banks ? A crossed cheque is sent to a banker by a customer. The banker places the amount of the cheques to the credit of his customer's account before it is realised. What is the effect of his doing so ? Would it make any difference if the banker was in London ?

2. H. R. Gupte opens an account with a bank describing himself as a commercial traveller and pays to his credit cheques drawn in favour of the Agra Mills. The cheques are credited to his account at once. Discuss the bank's position.

3. Enumerate the instances in which a collecting banker in India may lose his statutory protection on the ground of negligence.

4. State the course adopted on the dishonour of a bill forwarded for collection by one branch of a bank to another or to the head-office.

5. A customer of a bank pays in for the credit of his account a crossed cheque made payable to X. Y. Co., Ltd. and endorsed in blank. What risks, of any, does the bank run in collecting the cheque ?

6. A crossed cheque is sent to a bank by a customer to be placed to his credit. The banker credits the amount as cash before receiving the proceeds. What risks, if any, does the banker run by doing so ?

7. A crossed cheque is presented for payment by a bank. Payment is declined but no reason is given. Can the presenting banker enforce a written answer giving the reasons for the refusal to pay ? If so, how ?

8. A cheque payable to A. Dastur or order is sent to the Eastern Bank Ltd. by B. Desai, a local merchant. When presented it is paid by the Eastern Bank Ltd. However, it is subsequently discovered that the cheque was stolen from the payee after he had indorsed it and cashed for the thief by B. Desai. Has the collecting bank incurred any liability and if so, to whom, in the following circumstances :—

(i) The cheque is open.

(ii) It is crossed, generally.

(iii) It is crossed "not negotiable."

*VI. Employment of funds.*

1. Discuss the points which a banker should consider before the employment of his funds and state the different ways in which banks in Bombay generally employ their funds.

2. Discuss the various fields of investments for a commercial bank in Calcutta.

3. Draft a letter to a constituent of a bank asking him either to deposit more securities or to repay a part of the loan so that the margin agreed upon may be maintained.

4. State the precautions which a banker should take in lending money against (a) Debentures, (b) Partly paid-up shares, (c) Railway Shares.

5. What do you understand by "credit"? What stands as its basis?

6. Explain the method of taking registered Stock Exchange Securities as covers for bankers' advances and discuss their comparative advantages.

7. What considerations influence the judgment of a banker in forming an opinion about parties wanting advances?

8. State the precautions which must be taken, and the practice generally followed by bankers in advancing money against any two of the following:—

(1) Life Policies:

(2) Landed Property:

(3) Cotton.

9. Describe briefly the advisability of each of the following securities as cover for advances:—

(a) Government Paper.

(b) Shares of a bank.

(c) Shares of new companies.

(d) Partly paid-up shares.

What margin should a banker demand and what is the procedure in each of these cases?

10. Draft a letter to the Manager of the Head-Office of a bank in Bombay from its agents at Colombo, recommending and asking for permission to grant an advance by way of an overdraft to a constituent A on the security of 10,000 shares of the Lanea Oil Mill Ltd.

The balance sheet of the company to be enclosed with the letter.

Market value of the shares Rs. 200 each.

11. What is meant by discounting a bill? Classify the various kinds of bills presented to a bank for discounting. Is it better for the interest

of a bank to discount long-dated bills or short-dated bills ? How do banks fix the rate of discount ?

12. State briefly the general principles which govern secured advances and indicate the risks of making loans against documents of title to goods.

13. A Hindu client being heavily indebted to the bank is pressed to reduce the indebtedness. The bank require him to pay in cash about Rs. 50,000. The client explains that he cannot pay in cash for sometime, he offers as additional security the Title Deeds in respect of a property (inherited from his father) valued by the client at Rs. 1,00,000 at least. The monthly rents of the property aggregate Rs. 800.

(a) What questions should the bank manager put the client ?

(b) What further steps should the bank take ? The bank is inclined to accede to the client's request provided the bank be properly secured.

14. A banker has agreed to accept the following securities as a cover for a loan of Rs. 10,000. Describe the method by which the banker should take over the securities :—

(a) 100 shares of Rs. 75, each of the Tata Industrial Bank with Rs. 7/8/- paid up.

(b) 20 fully paid-up shares of Rs. 250 each, of the Indian Cement Co., Ltd.

(c) 5½% bearer War Bonds of Rs. 8,000.

15. A person offers to a banker any one of the following securities as a cover for a loan of Rs. 10,000 :—

(1) 16 Deferred shares of the Tata Iron & Steel Co., Ltd., quoted at Rs. 1,900 each (face value Rs. 90 each).

(2) 50 ordinary shares of the same company quoted at Rs 980 (face value Rs. 75).

(3) 75 bales of Broach cotton quoted at Rs. 180 per bale.

Which of these should he prefer and how should he take over the security ?

16. Describe and contrast the following as securities for bank advances :—

(1) A land certificate with possessory title.

(2) A land certificate with absolute title.

17. A, B and Co., Ltd, whose latest balance sheet is given below apply for a loan of Rs. 1,50,000 to be secured by first mortgage debentures, part of an issue of Rs. 2,70,000. Give your opinion with reasons whether or not the loan should be sanctioned.

<i>Liabilities.</i>	<i>Rs.</i>	<i>Assets</i>	<i>Rs.</i>
Capital subscribed and paid up	45,000	Land freehold	1,00,000
5½ % of First mortgage Debentures, authorised issue		Plant ...	50,000
of Rs. 2,70,000 ... ..	1,20,000	Cash at bankers	15,000
Sundry creditors ... ..	80,000	Book debts	35,000
		Stock ...	35,000
		Furniture	10,000
			<hr/>
	2,45,000		9,45,000

18. Why do commercial banks avoid accepting real estate as security for their advances? What precautions should they take in such transactions?

19. Explain the precautions which bankers take in advancing money against any three of the following securities :—

- (a) Shares of Joint Stock Companies.
- (b) Piece goods.
- (c) Immoveable property.
- (d) Oil seeds.

20. Draft a letter of guarantee giving a continuing security to the Hindustan Bank Ltd. for Rs. 5,000 to be advanced to Varma & Co.

21. State the most important terms which bankers' guarantee forms usually contain. Distinguish a 'contract of guarantee' from a 'contract of indemnity.' What is a continuing guarantee?

22. A bank advances money on the security of a guarantee. The guarantor learning that the principal debtor is in financial difficulties tenders to the bank the full amount of his liability under the guarantee and says, that the security deposited by the customer with the bank may be surrendered to him. What should the bank do?

23. A customer's account is overdrawn and upon being pressed for security he offers a guarantee of his daughter who has separate means of living, and has just come of age. Discuss the value of such a guarantee as security.

24. On 15th July, 1932 title deeds in respect of a valuable landed property were deposited with "A" bank in a presidency town to secure an overdraft in current account limit Rs. 1,00,000. The security was in the form of simple deposit of title deeds, no legal document being executed.

On 27th August, 1932, when the balance of the account was Dr. Rs. 72,000 "A" bank received notice that a second charge had been created in favour of "B" bank, this second charge was made by means of a stamped registered legal (second) mortgage document dated 27th August, 1932. What ought "A" bank to do and why?

*VII. Miscellaneous.*

1. Joseph Jones pays £50 to the credit of his current account and owing to an error on the part of the pass-book clerk the amount is entered in Jones's pass-book as £ 500 to his credit and the pass-book is delivered to him. What is the position of the bank ?

2. To what extent does an entry in the pass-book bind

(1) The banker

(2) The customer ?

3. How far is a banker bound by the entries made by him in his customer's pass-book ?

4. What is a garnishee order ? What steps should a banker take on receiving such an order relating to one of his customers who has,

(1) a credit balance in his current account,

(2) a fixed deposit for six months,

(3) a fixed deposit repayable at seven days' notice.

5. What mistakes render money recoverable ?

Money is paid into a customer's account by a third party under a mistake of fact. It is not drawn on by the customer of a bank whose account is overdrawn to a larger amount than that paid in. Can the money be recovered from the banker by the person who paid it in.

6. Who is responsible for the loss of a cheque in transit when it is sent through post ? What precautions in your opinion should the drawer of a cheque take to safeguard his own interests as well as those of the payees.

7. Write short notes on the following:—

(1) Allonge

(2) Rule in Clayton's case

(3) Delivery order.

(4) Equitable title.

(5) (i) Circular letters of credit, (ii) Documentary Letters of credit.

(6) " Effects not cleared."

(7) Letter of Indication.

(8) Circular cheques.

8. Draft a letter to be sent by one bank to another making a confidential inquiry as to the status of a customer of the latter.

9. Explain the principal forms of publicity used by banks in western countries.

10. What is meant by banker's general lien ? Can a banker claim his lien on the following ?—

- (a) Sealed boxes deposited for safe custody.
- (b) Dividend and interest warrants sent to him for collection.
- (c) Bills deposited with him for safe custody till maturity and collection.

11. Discuss fully the difference between negotiability and transferability. Are the following negotiable ?—

- (a) A Government of India Treasury Bill.
- (b) A bill of lading.
- (c) A fixed deposit receipt.
- (d) Letters of credit.
- (e) Government Promissory notes.

12. Explain the advantages which private companies have over public companies and state the restrictions that are imposed by law upon companies of the former class.

13. Explain the meaning of the following terms :—

- (1) Referee in case of need.
- (2) Travellers' cheque.
- (3) Accommodation bill.

14. Explain clearly the difference between a joint promissory-note and a joint and several promissory note. A promissory note runs : " I promise to pay," etc. and is signed by two or more persons. Is their liability joint or joint and several ?

15. What amount of stamp duty is payable in India on :—

- (a) Demand Drafts for Rs. 275 and Rs. 4,500 respectively.
- (b) Demand Promissory-notes for Rs. 350 and Rs. 12,200 respectively.
- (c) 30 days' sight Hundis for Rs. 770 and Rs. 90,000 respectively.
- (d) A bill drawn at 60 days' sight in England for £45. By whom and when should the requisite Indian stamps be affixed ?

16. What are the derivations of the words Bank and Bankrupt ?

17. What precautions should be observed by a banker in opening an account for parties as executors to an estate and what are the powers and duties of executors ?



18. The public in India frequently complain of the delay in obtaining cash for a cheque presented over the counter. It is said, with some truth, that in other countries cheques are generally presented to the bank cashier who cashes the cheques without delay and only in exceptional cases refers to the drawers' ledger account.

Explain the cause of the delay in India. State what steps should be taken to obviate the complaint.

19. Explain the subsidiary services which modern banks render to their customers. What is the reason for the backwardness of the Indian Joint Stock Bank in Foreign Exchanges ?

20. Write short notes on,

- (1) marked cheques,
- (2) inscribed stock,
- (3) dock warrants,
- (4) documentary bills,
- (5) mandate.

Draft a Circular Letter of Credit for £ 500 in favour of Paul Pry.

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